

**NGĀTI WHĀTUA ŌRĀKEI**

**and**

**NGĀTI WHĀTUA ŌRĀKEI TRUSTEE LIMITED**

**and**

**THE CROWN**

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**DEED OF SETTLEMENT SCHEDULE:  
DOCUMENTS**

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## 1 STATEMENT OF ASSOCIATION

Ngāti Whatua Ōrākei's statement of association is set out below. These are statements of Ngāti Whatua Ōrākei's particular cultural, spiritual, historical, and traditional association with identified areas.

### Area

Land owned by the Crown and held for defence purposes at Kauri Point (as shown marked "B" on deed plan OTS-121-02 ).

Land owned by the Crown, and vested for control and management in the Auckland Council, at Kauri Point (as shown marked "A" on deed plan OTS-121-02).

### Statement of association

- 1.1 The lands of Tāmaki Makaurau are part of the body of the earth mother Papatūānuku or, alternatively, may be visualised as part of the great fish raised up by Maui, its irregularities resulting from the careless efforts of his brothers to carve it up. Such traditions reflect tribal cosmological beliefs and explain the environment Ngāti Whātua Ōrākei ancestors and their descendants have encountered. They link ancestral names and events to landscapes and provide an unbroken association with the formation of Tāmaki Makaurau and its many generations of ongoing human occupation. They also reflect the spiritual nature of the land – associated with the actions of the gods themselves and the very body of our earth parent.
- 1.2 The mauri of Te Mātārae a Mana is the essence that binds physical and spiritual elements together, generating and sustaining all life. All elements of the natural environment possess mauri and all life is related. Mauri is a key part of the relationship of Ngāti Whātua Ōrākei with Te Mātārae a Mana. The condition of the land reflects our ability as kaitiaki and predicts our own wellbeing.
- 1.3 Auckland has a long history of Māori occupation and as the name Tāmaki Makaurau reflects, has been desired by many. It has always been a place where tribal groups came together and coalesced, emphasizing their claim to the land through a multiplicity of ancestral connections. The three segments of what is now called the Ōrākei hapū of Ngāti Whātua, namely, Te Tāōū, Ngā Oho and Te Uringutu, claim mana whenua in Tāmaki by right of raupatu (conquest), whakapapa and ahi kā (ongoing occupation). In the mid 1700s a series of battles were fought between Te Tāōū and the Waiōhua people of Tāmaki led by the rangatira Kiwi. The invading Te Tāōū prevailed on the isthmus and, following strategic marriages between them and Waiōhua women, the Te Tāōū rangatira Tuperiri revived the name of his mother's people, Ngā Oho, and that of a Māngere segment of Waiōhua, Te Uringutu. Accordingly, it is these three, Te Tāōū, Ngā Oho and Te Uringutu, who have since maintained the ahi kā of Ngāti Whātua in Tāmaki Makaurau. Ngāti Whātua Ōrākei claims descent from all groups that have occupied Tāmaki over the centuries, exemplified in our ariki Apihai Te Kawau, who signed the Treaty of Waitangi, through the title applied to him of "the man of many cousins", which reflected the many ancestral strands on which he could call to support his claims to mana whenua in Tāmaki.
- 1.4 Kauri Point and the area around it has an extensive history, many ancestral names and traditions being associated with the region and its associated waters.

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- 1.5 Te Mōkai a Kahu was a taniwha pet of Kahumatamomoe who would annually swim around the rock island Te Matā o Kahu (Nihokiore / Boat Rock) near Te Mātārae a Mana, showing that the shark season was due. After Ngāpuhi destroyed the mauri stone (Te Arawa Kahu) on that island, Te Mōkai a Kahu has, according to some, remained in its underwater den in the deep channel off Te Mātārae a Mana.
- 1.6 The pā at Kauri Point, Te Mātārae a Mana (Mana's brow/headland), was surrounded by high cliffs on its seaward faces and was only accessible via a narrow path that wound between defensive earthworks on its landward side. It is named after Mana o Te Rangī, a Kawerau chief of the area who married Waikahuia, sister of the Waiōhua rangatira Kiwi. Mana was also a near relative of the Te Tāōū rangatira Tuperiri and hence when the Te Tāōū taua invaded Tāmaki, Mana's kāinga was the only one on the Waitematā foreshore that was spared. When Mana grew old he commended his people to Tuperiri's care. His son Takarau would subsequently serve as a warrior with Tuperiri's grandson Apihai Te Kawau. Takarau was eventually killed and the village destroyed by Ngāpuhi under Hongi in a night raid about 1823. Takarau's son Maruroa and his followers returned to reoccupy Te Mātārae a Mana for a decade from about 1835, after the end of the musket wars in Tāmaki and the return of those of Ngāti Whātua who had relocated whilst they were taking place.
- 1.7 Te Mātārae a Mana and its surrounding lands cannot be seen in isolation but as one occupation site / resource hub in a Tāmaki cityscape of often connected kāinga and use sites. This landscape was intimately understood by our ancestors, who practised an economic cycle that made use of all the resources of the region in different seasons at different places.
- 1.8 Tarahawaiki (son of Tuperiri) and Te Wahaakiaki of Te Tāōū occupied Onewa in the period after the conquest. Te Tāōū would reside seasonally at Te Mātārae a Mana (beside the aptly named Shark, now Kendall, Bay) to fish for sharks and to gather shellfish, as had Kiwi and Waiōhua before them. In the early 1790s, during a period of friction between the tribes, Ngāti Whātua surprised a fishing party from a neighbouring iwi at Te Mātārae a Mana, killed most of the crew and took their waka. The use of Te Mātārae a Mana continued in the next generation under Apihai Te Kawau and gardens were maintained there for the use of fishing parties.
- 1.9 In the decades prior to the signing of the Treaty, Ngāti Whātua continued to occupy and work at Maunganui/ Mangonui (a pā located on the ridge at the back of Kauri Point) and Onewa. It was at the fishing grounds off Te Mātārae a Mana that many of the sharks that supplied the massive 'Remuera Feast' of 1844 were caught. By the 1860s considerable numbers of Māori waka and boats were still to be found fishing off Te Mātārae a Mana in the March shark season. Members of Ngāti Whātua Ōrākei fish those waters to this day. Waipokanoa ('waters of foolishness') was a fishery off Te Mātārae a Mana near Te Matā a Kahu. Wairoria ('swirling waters') referred to the consistent rip-tide (and foreshore) to the west of Te Mātārae a Mana. Kendall Bay was traditionally known as Rongohau ('sheltered from the wind') and was a favourite refuge of canoe parties in heavy weather.
- 1.10 Ngutuwera was a pā/kāinga behind Rongohau. During the migratory season of the kākā, Kiwi and his people used to snare the birds in the wooded gullies near Ngutuwera/Tāwhiwhi-kareao (a little bay near Te Mātārae a Mana). A Ngāti Whātua taua (which included the renowned warrior Murupaenga) camped at Ngutuwera before attacking pā around the coast during the 18<sup>th</sup> Century war with Kiwi.
- 1.11 Ngāti Whātua Ōrākei have continued to be active participants in the society and development of Auckland in the post-Treaty era. Thus we share in the history of the past

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### 1 STATEMENT OF ASSOCIATION

one hundred and seventy years of this city with all Aucklanders. Developments around Te Mātārae a Mana in that time are a part of our history too, For instance, roading, tracks, reserves, parks, buildings, reservoirs, construction, landscaping – even if such developments may not always have been supported by Ngāti Whātua and in many instances have damaged significant sites and failed to recognise their values to tangata whenua. Members of the hapū have never ceased visiting these places or appreciating their cultural significance and we share an interest in their ongoing sustainable management.

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2 PROTOCOLS

2 PROTOCOLS

2 PROTOCOLS: DEPARTMENT OF CONSERVATION

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF CONSERVATION  
REGARDING DEPARTMENT OF CONSERVATION INTERACTION WITH NGĀTI WHĀTUA  
ŌRĀKEI ON SPECIFIED ISSUES**

**1. INTRODUCTION**

- 1.1 Under the Deed of Settlement dated [ ] between Ngāti Whātua Ōrākei and the Crown, the Crown, through the Minister of Conservation, agreed to issue a Protocol setting out how the Department of Conservation (“the Department”) will interact with the Ngāti Whātua Ōrākei governance entity on specified issues.
- 1.2 Both the Department and Ngāti Whātua Ōrākei are committed to establishing and maintaining a positive and collaborative relationship that gives effect to the principles of the Treaty of Waitangi as provided for in section 4 of the Conservation Act 1987. Those principles provide the basis for the ongoing relationship between the parties to the Protocol to achieve over time the conservation policies, actions and outcomes sought by both the governance entity and the Department, as set out in this Protocol.
- 1.3 The purpose of the Conservation Act 1987 is to enable the Department to manage natural and historic resources under that Act and to administer the Acts in the First Schedule to the Act. The Minister and Director-General are required to exercise particular functions, powers and duties under that legislation.

**2. PURPOSE OF THE PROTOCOL**

- 2.1 The purpose of this Protocol is to assist the Department and Ngāti Whātua Ōrākei to exercise their respective responsibilities with the utmost co-operation to achieve over time the conservation policies, actions and outcomes sought by both.
- 2.2 The Protocol sets out a framework that enables the Department and Ngāti Whātua Ōrākei to establish a healthy and constructive working relationship that is consistent with section 4 of the Conservation Act. It provides for Ngāti Whātua Ōrākei to have meaningful input into certain policy, planning and decision-making processes, management of conservation lands and fulfilment of statutory responsibilities within the Protocol Area.

**3. PROTOCOL AREA**

- 3.1 This Protocol applies across the Protocol Area which means the area identified in the map included in Attachment A of this Protocol.

**4. TERMS OF ISSUE**

- 4.1 This Protocol is issued pursuant to section 22 of the Ngati Whātua o Orakei Claims Settlement Act [20--] and clause 5.3 of the Deed of Settlement. A summary of the provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued is set out in Attachment B of the Protocol.

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#### 5. IMPLEMENTATION AND COMMUNICATION

- 5.1 The Department will seek to establish and maintain communication with Ngāti Whātua Ōrākei on a continuing basis by:
- 5.1.1 Maintaining information on the governance entity's office holders, and their addresses and contact details;
  - 5.1.2 Providing a primary departmental contact for the governance entity being the Area Manager who will act as a liaison person with other departmental staff;
  - 5.1.3 Providing reasonable opportunities for the governance entity to meet with Departmental managers and staff;
  - 5.1.4 Holding alternate meetings at the Area Office and a Ngāti Whātua Ōrākei marae or other venue chosen by the governance entity to review implementation of the Protocol every six months, unless otherwise agreed. Ngāti Whātua Ōrākei may, when such meetings are held at a Ngāti Whātua Ōrākei marae or other venue chosen by the governance entity, arrange for an annual report back to the Ngāti Whātua Ōrākei people at such meetings; and
  - 5.1.5 Training relevant staff on the content of the Protocol and briefing the Auckland Conservation Board members on the content of the Protocol.
- 5.2 Within the first year of this Protocol being issued, and on a continuing basis, the Department and the governance entity will identify practical ways in which:
- 5.2.1 Ngāti Whātua Ōrākei can exercise kaitiakitanga over ancestral lands, natural and historic resources and other taonga managed by the Department;
  - 5.2.2 The Department can manage wahi tapu, and taonga tapu and other places of historic or cultural significance to Ngāti Whātua Ōrākei in a manner which respects Ngāti Whātua Ōrākei tikanga and values;
  - 5.2.3 The Department can acknowledge the governance entity's interest in training and employment opportunities with the Department and the governance entity's role as a trainer for the Department; and
  - 5.2.4 Ngāti Whātua Ōrākei can actively participate in conservation management and activities including the Department's volunteer and conservation events programmes.



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#### 6. SPECIFIC PROJECTS

- 6.1 The Department and the governance entity will on an annual basis identify priorities for undertaking specific projects requested by the governance entity. The identified priorities for the upcoming business year will be taken forward by the Department into its business planning process and considered along with other priorities.
- 6.2 The decision on whether any specific projects will be funded in any business year will be made by the Conservator and Deputy Director-General, after following the co-operative processes set out above.
- 6.3 If the Department decides to proceed with a specific project requested by the governance entity, the governance entity and Department will meet again, if required, to finalise a work plan and timetable for implementation of the specific projects in that business plan.
- 6.4 If the Department decides not to proceed with a specific project requested by the governance entity, the Department will advise the governance entity of the reason(s) for this.

#### 7. CULTURAL MATERIALS

- 7.1 Cultural materials for the purpose of this Protocol are plants, plant materials, and materials derived from animals or birds for which the Department is responsible in the Protocol Area. Some of these materials are of importance to Ngāti Whātua Ōrākei in maintaining its culture, including medicinal practices, toi mahi and gathering of mahinga kai in accordance with Ngāti Whātua Ōrākei tikanga.
- 7.2 Current legislation means that generally some form of concession or permit is required for any gathering and possession of cultural materials.
- 7.3 The Minister and/or Director General will:
  - 7.3.1 Consider requests from the governance entity for the customary use of cultural materials in accordance with the relevant legislation;
  - 7.3.2 Agree, where appropriate, for the governance entity to have access to cultural materials which become available as a result of departmental operations such as track maintenance or clearance, or where materials become available as a result of road kill; and
  - 7.3.3 Consult with the governance entity in circumstances where there are competing requests from persons or entities other than Ngāti Whātua Ōrākei for the use of cultural materials, for example for scientific research purposes.
- 7.4 The Department will work with the governance entity to develop procedures for monitoring sustainable levels and methods of use of cultural materials in accordance with the relevant legislation.

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#### 8. HISTORIC RESOURCES / WAHI TAPU

- 8.1 Ngāti Whātua Ōrākei consider that Te Tiriti o Waitangi / the Treaty of Waitangi covered wahi tapu, including urupa, wahi taonga, and other places of historic significance as taonga (priceless treasures) for all the hapu and iwi of Aotearoa. The Department will respect the great significance of these taonga by fulfilling the obligations contained in this section of the Protocol.
- 8.2 The Department has a statutory role to conserve historic resources in protected areas and will endeavour to do this for sites of significance to Ngāti Whātua Ōrākei in association with the governance entity and according to Ngāti Whātua Ōrākei tikanga.
- 8.3 The Department accepts that non-disclosure of locations of places known to Ngāti Whātua Ōrākei may be an option that the governance entity chooses to take to preserve the wahi tapu nature of places. The responsibility for identifying and assessing Ngāti Whātua Ōrākei heritage values rests largely with Ngāti Whātua Ōrākei. There may be situations where the governance entity will ask the Department to treat information it provides on wahi tapu in a confidential way. The Department and the governance entity will work together to establish processes for dealing with information on wahi tapu sites in a way that recognises both the management challenges that confidentiality can present and respects the views of Ngāti Whātua Ōrākei.
- 8.4 To assist in this process, the governance entity will notify the Area Manager of any concerns with the Department's management of wahi tapu areas and the Department will take all reasonable steps to address the situation.
- 8.5 The Department will work with the governance entity at the Area Office level to respect Ngāti Whātua Ōrākei values attached to identified wahi tapu, wahi taonga and places of historic significance on lands administered by the Department by:
- 8.5.1 Managing sites of historic significance to Ngāti Whātua Ōrākei according to standards of conservation practice which care for places of cultural heritage value, their structures, materials and cultural meaning, as outlined in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 1993;
  - 8.5.2 Undertaking protection and conservation of wahi tapu and other sites of significance in co-operation with Ngāti Whātua Ōrākei;
  - 8.5.3 Consulting with the governance entity before any work is carried out by a party other than the Department or the governance entity (eg a community restoration trust) on land administered by the Department;
  - 8.5.4 Ensuring as far as possible that when another entity (e.g. community trust) is undertaking work on land managed by the Department the work undertaken is consistent with the standards of conservation practice outlined in the ICOMOS New Zealand Charter 1993;
  - 8.5.5 Informing the governance entity if wheua tangata are found; and
  - 8.5.6 Assisting in recording and protecting wahi tapu and other places of cultural significance to Ngāti Whātua Ōrākei where appropriate, to ensure that they are not desecrated or damaged.

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#### 9. INDIGENOUS FLORA AND FAUNA

- 9.1 One of the Department's primary objectives is to ensure the survival of species and their genetic diversity. An important part of this work is to prioritise recovery actions in relation to the degree of threat to a species. The Department prioritises recovery actions at both a national and local level.
- 9.2 In recognition of Ngāti Whātua Ōrākei's cultural, spiritual, historic and traditional association with indigenous flora and fauna occurring naturally within the Protocol Area for which the Department has responsibility, the Department will in relation to any of those species that Ngāti Whātua Ōrākei may identify as important to them through the processes provided under clauses 5 and 6:
- 9.2.1 Where a national recovery programme is being implemented within the Protocol Area, inform and, where it is practicable to do so, provide opportunities for the governance entity to participate in that programme;
- 9.2.2 Provide opportunities for the governance entity to input into any Conservation Management Strategy reviews, or the preparation of any statutory or non-statutory plans, policies or documents that relate to the management of those species within the Protocol Area;
- 9.2.3 Inform the governance entity before commencing any research and monitoring projects being carried out by the Department within the Protocol Area, and, where reasonably practicable, provide opportunities for the governance entity to participate in those projects.
- 9.2.4 Advise the governance entity of the receipt of any research reports relating to indigenous species within the Protocol Area, and provide copies or the opportunity for the governance entity to study those reports.

#### 10. MARINE MAMMALS

- 10.1 The Department administers the Marine Mammals Protection Act 1978 and the Marine Mammals Regulations 1992. These provide for the establishment of marine mammal sanctuaries, for permits in respect of marine mammals, the disposal of sick or dead specimens and the prevention of marine mammal harassment. All species of marine mammal occurring within New Zealand and New Zealand's fisheries waters are absolutely protected under the Marine Mammals Protection Act 1978. Under that Act the Department is responsible for the protection, conservation and management of all marine mammals, including their disposal and the health and safety of its staff and any volunteers under its control, and the public.
- 10.2 The Department believes that there are opportunities to meet the cultural interests of Ngāti Whātua Ōrākei and to facilitate the gathering of scientific information. This Protocol is intended to meet both needs by way of a co-operative approach to the management of whale strandings and to provide general guidelines for the management of whale strandings in the Protocol Area, and for the recovery by Ngāti Whātua Ōrākei of bone and other material for cultural purposes from dead marine mammals.
- 10.3 In achieving these objectives, the Protocol also aims to enable the Department to give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi as expressed in section 4 of

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the Conservation Act as well as assisting the conservation of cetacean species by contribution to the collection of specimens and scientific data of national and international importance.

- 10.4 There may be circumstances during a stranding in which euthanasia is required, for example if the animal is obviously distressed or if it is clear that a refloating operation is unsuccessful. The decision to euthanase is the responsibility of the Department's stranding control officer. The Department will make every effort to inform the governance entity before any decision to euthanase. If Ngāti Whātua Ōrākei representatives are not available at the time a decision is made to euthanase, it will be the responsibility of the stranding control officer to make decisions in the best interests of the marine mammals and public safety.
- 10.5 Both the Department and Ngāti Whātua Ōrākei acknowledge the scientific importance of information gathered at strandings. Decisions concerning the exact nature of the scientific samples required and the subsequent disposal of any dead animals, including their availability to Ngāti Whātua Ōrākei, will depend on the species.
- 10.6 The following species ("category 1 species") are known to strand most frequently on New Zealand shores. In principle these species should be available to the governance entity for the recovery of bone once scientific data and samples have been collected. If there are reasons why this principle should not be followed, they must be discussed between the parties to this Protocol. Category 1 species are:
- 10.6.1 Common dolphins (*Delphinus delphis*)
  - 10.6.2 Long-finned pilot whales (*Globicephala melas*)
  - 10.6.3 Sperm whales (*Physeter macrocephalus*).
- 10.7 The following species ("category 2 species") are either not commonly encountered in New Zealand waters, or may frequently strand here but are rare elsewhere in the world. For these reasons their scientific value has first priority. In most instances, bone from category 2 species will be made available to the governance entity after autopsy if requested.
- 10.7.1 All baleen whales
  - 10.7.2 Short-finned pilot whale (*Globicephala macrorhynchus*)
  - 10.7.3 Beaked whales (all species, family Ziphiidae)
  - 10.7.4 Pygmy sperm whale (*Kogia breviceps*)
  - 10.7.5 Dwarf sperm whale (*Kogia simus*)
  - 10.7.6 Bottlenose dolphin (*Tursiops truncatus*)
  - 10.7.7 Maui's dolphin (*Cephalorhynchus hectori maui*)
  - 10.7.8 Dusky dolphin (*Lagenorhynchus obscurus*)

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- 10.7.9 Risso's dolphin (*Grampus griseus*)
  - 10.7.10 Spotted dolphin (*Stenella attenuata*)
  - 10.7.11 Striped dolphin (*Stenella coeruleoalba*)
  - 10.7.12 Rough-toothed dolphin (*Steno bredanensis*)
  - 10.7.13 Southern right whale dolphin (*Lissodelphis peronii*)
  - 10.7.14 Spectacled porpoise (*Australophocoena dioptrica*)
  - 10.7.15 Melon-headed whale (*Peponocephala electra*)
  - 10.7.16 Pygmy killer whale (*Feresa attenuata*)
  - 10.7.17 False killer whale (*Pseudorca crassidens*)
  - 10.7.18 Killer whale (*Orcinus orca*)
  - 10.7.19 Any other species of cetacean previously unknown in New Zealand waters.
- 10.8 If Ngāti Whātua Ōrākei does not wish to recover the bone or otherwise participate the governance entity will notify the Department whereupon the Department will take responsibility for disposing of the carcass.
- 10.9 Because the in-situ recovery of bones involves issues relating to public safety, including the risk of infection from dead and decaying tissue, it needs to be attempted only by the informed and skilled. Ngāti Whātua Ōrākei bone recovery teams will also want to ensure that the appropriate cultural tikanga is understood and followed. However, both parties acknowledge that generally burial will be the most practical option.
- 10.10 Subject to the prior agreement of the Conservator, where disposal of a dead stranded marine mammal is carried out by the governance entity, the Department will meet the reasonable costs incurred up to the estimated costs that would otherwise have been incurred by the Department to carry out the disposal.
- 10.11 The Department will:
- 10.11.1 Reach agreement with the governance entity on authorised key contact people who will be available at short notice to make decisions on the desire of Ngāti Whātua Ōrākei to be involved when there is a marine mammal stranding;
  - 10.11.2 Promptly notify the key contact people of all stranding events;
  - 10.11.3 Discuss, as part of the disposal process, burial sites and, where practical, agree sites in advance which are to be used for disposing of carcasses in order to meet all the health and safety requirements and to avoid the possible violation of Ngāti Whātua Ōrākei tikanga; and

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- 10.11.4 Consult with the governance entity should the Department wish to prepare plans for research and monitoring of the seal population within the Protocol Area.
- 10.12 In areas of over-lapping interest, Ngāti Whātua Ōrākei, will work with the Department and the relevant iwi to agree on a process to be followed when managing marine mammal strandings.
- 11. RESOURCE MANAGEMENT ACT 1991**
- 11.1 Ngāti Whātua Ōrākei and the Department both have concerns with the effects of activities controlled and managed under the Resource Management Act 1991. Areas of common interest may include riparian management, effects on freshwater fish habitat, water quality management, and protection of indigenous vegetation and habitats.
- 11.2 From time to time, the governance entity and the Department will seek to identify further issues of likely mutual interest for discussion. It is recognised that their concerns in any particular resource management issue may diverge and that the Department and the governance entity will continue to make separate submissions in any Resource Management Act processes.
- 11.3 In carrying out advocacy under the Resource Management Act the Department will:
- 11.3.1 Discuss with the governance entity the general approach that may be taken by Ngāti Whātua Ōrākei and the Department in respect of advocacy under the Resource Management Act, and seek to identify their respective priorities and issues of mutual concern;
  - 11.3.2 Have regard to the priorities and issues of mutual concern identified in making decisions in respect of advocacy under the Resource Management Act; and
  - 11.3.3 Make non-confidential resource information available to the governance entity to assist in improving their effectiveness in resource management advocacy work.
- 12. FRESHWATER FISHERIES**
- 12.1 Freshwater Fisheries are managed under two sets of legislation: The Fisheries Act 1983 and 1996 (administered by the Ministry of Fisheries) and the Conservation Act 1987. The Conservation Act deals specifically with the conservation of non-commercial freshwater fisheries and habitat. The whitebait fishery is administered under the Whitebait Fishing Regulations 1994, made under the Conservation Act 1987.
- 12.2 The Department and the governance entity will work together to ensure that the Department is aware of relevant tikanga relating to freshwater fisheries.
- 12.3 The Department will work at an Area Office level to provide for active participation by the governance entity in the conservation, management and research of customary freshwater fisheries and freshwater fish habitats by:
- 12.3.1 Seeking to identify areas for co-operation focusing on fish passage, minimum flows, protection of riparian vegetation and habitats, water quality improvement and

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in the restoration, rehabilitation or enhancement of customary freshwater fisheries and their freshwater habitats;

- 12.3.2 Consulting with the governance entity where the Department is developing or contributing to research and monitoring programmes that aim to improve the understanding of the biology of customary freshwater fisheries and their environmental and habitat requirements; and
- 12.3.3 Considering the governance entity as a possible science provider or collaborator for research projects funded or promoted by the Department in the same manner as other potential providers or collaborators.

### 13. PEST CONTROL

- 13.1 A key objective of and function of the Department is to prevent, manage or control threats to natural, historic and cultural values from pests. This needs to be done in a way that maximises the value from limited resources available to do this work.
- 13.2 The Department will:
  - 13.2.1 Seek and facilitate early consultations with the governance entity on pest control activities within the Protocol Area, particularly in relation to the use of poisons; and
  - 13.2.2 Provide the governance entity with opportunities to review and assess programmes and outcomes.

### 14. VISITOR AND PUBLIC INFORMATION

- 14.1 The Department has a role to share knowledge about natural and historic heritage with visitors to satisfy their requirements for information, increase their enjoyment and understanding of this heritage, and develop an awareness of the need for its conservation. In providing public information and interpretation services and facilities for visitors on the land it manages, the Department will recognise the importance to Ngāti Whātua Ōrākei of their cultural, traditional and historic values and the association of Ngāti Whātua Ōrākei with the land the Department administers within the Protocol Area.
- 14.2 The Department will work with the governance entity at the Area Office level to encourage respect for Ngāti Whātua Ōrākei values by:
  - 14.2.1 Seeking to raise public awareness of positive conservation partnerships developed between the governance entity, the Department and other stakeholders, for example, by way of publications, presentations and seminars;
  - 14.2.2 Consulting on the provision of interpretation and visitor facilities (if any) at wahi tapu, wahi taonga and other places of historic or cultural significance to Ngāti Whātua Ōrākei within the Protocol Area; and
  - 14.2.3 Ensuring that information on new panels, signs and visitor publications includes Ngāti Whātua Ōrākei perspectives and references to the significance of the sites to Ngāti Whātua Ōrākei where appropriate, including the use of traditional Ngāti Whātua Ōrākei place names.

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#### 15. CONCESSION APPLICATIONS

- 15.1 The Department will work with the governance entity to identify categories of concessions that may impact on the cultural, spiritual or historical values of Ngāti Whātua Ōrākei.
- 15.2 In relation to the concession applications within the categories identified under clause 15.1, the Minister will:
- 15.2.1 Consult with the governance entity with regard to any applications or renewals of applications within the Protocol Area;
  - 15.2.2 When a concession is publicly notified, the Department will at the same time provide separate written notification to the governance entity;
  - 15.2.3 Prior to issuing concessions to carry out activities on land managed by the Department within the Protocol Area, and following consultation with the governance entity, the Minister will advise the concessionaire of Ngāti Whātua Ōrākei tikanga and values and encourage communication between the concessionaire and the governance entity if appropriate; and
  - 15.2.4 Ensure as far as possible when issuing and renewing concessions that give authority for other parties to manage land administered by the Department, that those parties:
    - (a) Be required to manage the land according to the standards of conservation practice outlined in the ICOMOS New Zealand Charter 1993; and
    - (b) Be encouraged to consult with the governance entity before using cultural information of Ngāti Whātua Ōrākei.

#### 16. APPOINTMENTS TO BOARDS

- 16.1 The Department will recommend that the Minister consult the governance entity when carrying out consultation with tangata whenua for the purpose of appointing tangata whenua members to the Hauraki Gulf Forum under s 16(2)(e) of the Hauraki Gulf Marine Park Act 2000.
- 16.2 The Department will notify the governance entity when nominations are invited for appointments to the Auckland Conservation Board, and will provide the governance entity with any information or material that will assist in making a nomination or nominations.

#### 17. CONSULTATION

- 17.1 Where the Department is required to consult under this Protocol, the basic principles that will be followed by the Department in consulting with the governance entity in each case are:
- 17.1.1 Ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Department of the proposal or issues to be the subject of the consultation;



## DOCUMENTS

### 2 PROTOCOLS: DEPARTMENT OF CONSERVATION

- 17.1.2 Providing the governance entity with sufficient information to make informed discussions and submissions in relation to any of the matters that are the subject of the consultation;
- 17.1.3 Ensuring that sufficient time is given for the effective participation of the governance entity in the decision making process and the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;
- 17.1.4 Ensuring that the Department will approach the consultation with the governance entity with an open mind, and will genuinely consider any concerns that the governance entity may have in relation to any of the matters that are the subject of the consultation.

#### 18. REVIEW

- 18.1 The parties agree that this Protocol is a living document which should be updated and adapted to take account of future developments. The first review of this Protocol will take place 12 months after the Tāmaki Makaurau Collective deed comes into effect in respect of any amendments to this Protocol that are necessary or appropriate in light of the Collective relationship document with the Department, which Ngāti Whātua Ōrākei will be part of. If requested by either party the Protocol will be reviewed every three years thereafter.
- 18.2 The parties may only vary this Protocol pursuant to clause 18.1 by agreement in writing.

#### 19. DEFINITIONS

In this Protocol:

**Concession** means a lease, license permit or easement granted under Part 3B of the Conservation Act 1987;

**Conservation Management Strategy** has the same meaning as in the Conservation Act 1987;

**Crown** means the Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

**Department** means the Minister of Conservation, the Director-General and the Departmental managers to whom the Minister of Conservation's and the Director-General's decision-making powers can be delegated;

**governance entity** means Ngāti Whātua Ōrākei Trustee Limited as trustee of the Ngāti Whātua Ōrākei Trust;

**Ngāti Whātua Ōrākei** has the meaning set out in clauses 8.5 and 8.6 of the Deed of Settlement;

**Kaitiakitanga** means guardianship in accordance with tikanga;



DOCUMENTS

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2 PROTOCOLS: DEPARTMENT OF CONSERVATION

**SIGNED** for and on behalf of  
**THE SOVEREIGN**  
in right of New Zealand by  
the Minister of Conservation

**WITNESS**

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Name \_\_\_\_\_

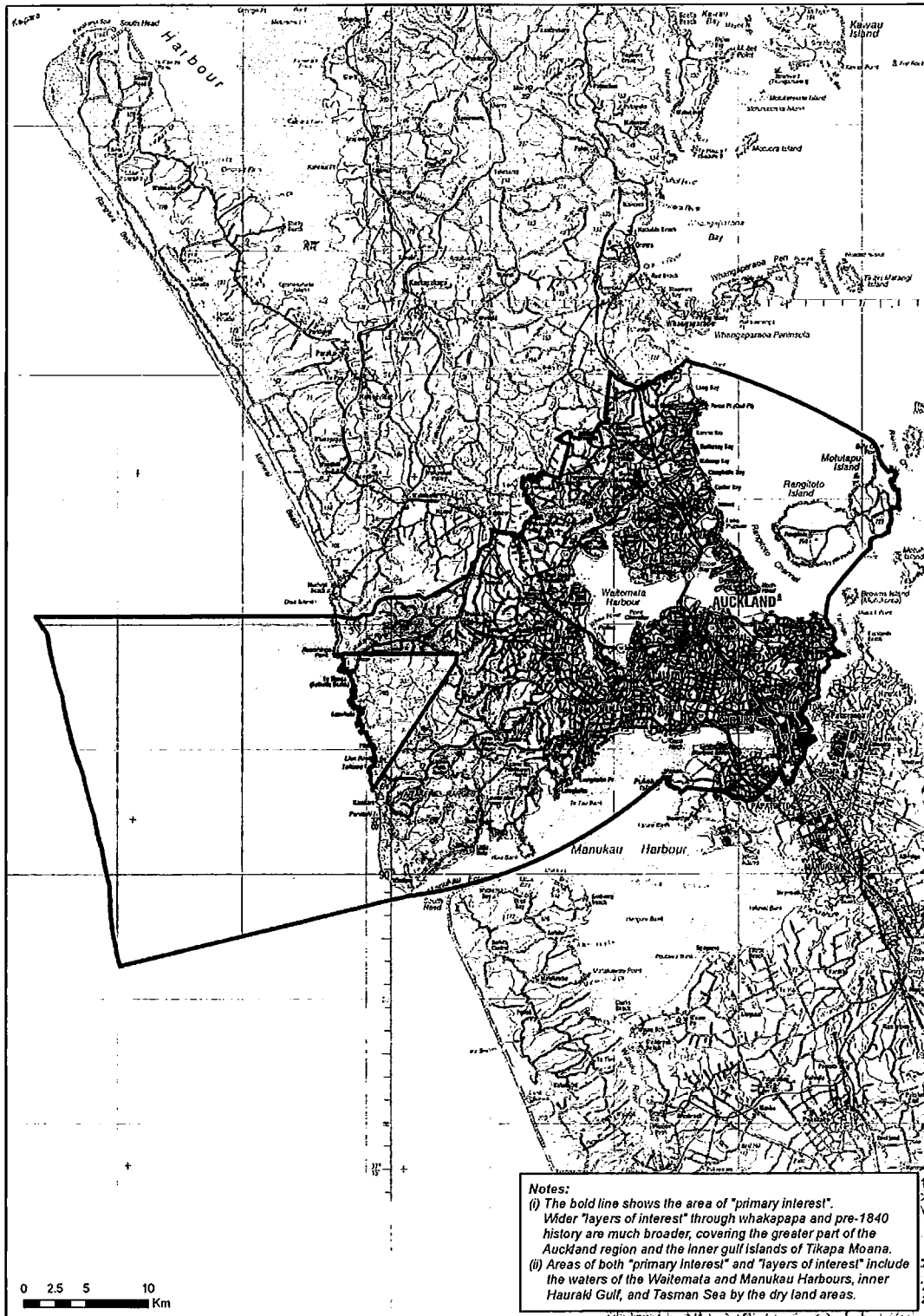
Occupation \_\_\_\_\_

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2 PROTOCOLS: DEPARTMENT OF CONSERVATION

ATTACHMENT A: NGĀTI WHĀTUA ŌRĀKEI AREA OF INTEREST



AEO1629 17 August 2011

## DOCUMENTS

### 2 PROTOCOLS: DEPARTMENT OF CONSERVATION

#### ATTACHMENT B – SUMMARY OF TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

#### 1. **Amendment and cancellation**

- 1.1 The Minister may amend or cancel this Protocol, but only after consulting the governance entity and having particular regard to its views (section 22).

#### 2. **Noting**

- 2.1 A summary of the terms of this Protocol must be noted in the Conservation Documents affecting the Protocol Area, but the noting:

2.1.1 is for the purpose of public notice; and

2.1.2 does not amend the Conservation Documents for the purposes of the Conservation Act 1987 or the National Parks Act 1980 (section 26).

#### 3. **Limits**

- 3.1 This Protocol does not:

3.1.1 restrict the Crown from exercising its powers and performing its functions and duties, in accordance with the law and government policy, including:

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a Protocol to, or interacting or consulting with, anyone the Crown considers appropriate including any iwi, hapu, marae, whanau or representatives of tangata whenua (section 23); or

3.1.2 restrict the responsibilities of the Minister or the Department or the legal rights of Ngāti Whātua Ōrākei (section 23); or

3.1.3 grant, create or provide evidence of an estate or interest in, or rights relating to;

(a) land held, managed or administered under Conservation Legislation; or

(b) flora or fauna managed or administered under the Conservation Legislation; or

(c) the common marine and coastal area (as defined by section 7(1) of the Marine and Coastal Area (Takutai Moana) Act 2011) (section 25).

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2 PROTOCOLS: DEPARTMENT OF CONSERVATION

4. **Breach**

- 4.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 24).
- 4.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 5.6).

**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING CONSULTATION WITH NGĀTI WHĀTUA Ō ŌRĀKEI BY THE MINISTRY OF ECONOMIC DEVELOPMENT ON THE ADMINISTRATION OF CROWN OWNED MINERALS**

**1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated [ ] between Ngāti Whātua Ōrākei and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister of Energy and Resources (the "**Minister**") would issue a Protocol (the "**Crown Minerals Protocol**") setting out how the Ministry of Economic Development (the "**Ministry**") will consult with the Ngāti Whātua Ōrākei governance entity (the "**governance entity**") on matters specified in the Crown Minerals Protocol.
- 1.2 Both the Ministry and Ngāti Whātua Ōrākei are seeking a healthy and constructive relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.3 The purpose of the Crown Minerals Act 1991 (the "**Act**") is to restate and reform the law relating to the management of Crown owned minerals. Section 4 of the Act requires all persons exercising functions and powers under the Act to have regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.4 The Minister is responsible under the Act for the preparation of mineral programmes, the grant of minerals permits, and monitoring the effect and implementation of minerals programmes and minerals permits. The Ministry administers the Act on behalf of the Minister.
- 1.5 This Crown Minerals Protocol will affect the Ministry's administration of Crown owned minerals under the Act in the Crown Minerals Protocol Area.

**2 PURPOSE OF THIS PROTOCOL**

- 2.1 With the intent of creating a constructive relationship between Ngāti Whātua Ōrākei and the Ministry in relation to mineral resources administered in accordance with the Act in the Crown Minerals Protocol Area, this Crown Minerals Protocol sets out how the Ministry will exercise its functions, powers, and duties in relation to the matters set out in this Crown Minerals Protocol.
- 2.2 The governance entity will have the opportunity for input into the policy, planning, and decision-making processes relating to the matters set out in this Crown Minerals Protocol in accordance with the Act and the relevant minerals programmes issued under the Act.

**3 PROTOCOL AREA**

- 3.1 This Crown Minerals Protocol applies across the Crown Minerals Protocol Area which means the area identified in the map included in Attachment A of this Crown Minerals Protocol together with the adjacent waters.

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2 PROTOCOLS: CROWN MINERALS PROTOCOL

4 TERMS OF ISSUE

- 4.1 This Crown Minerals Protocol is issued pursuant to section 22 of Ngati Whatua Orakei Claims Settlement Act [xxxx] (the “**Settlement Legislation**”) that implements clause 5.3 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 A summary of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued is set out in Attachment B of the Protocol.

5 CONSULTATION

- 5.1 The Minister will ensure that the governance entity is consulted by the Ministry:

**New minerals programmes**

- 5.1.1 on the preparation of new minerals programmes which relate, whether wholly or in part, to the Crown Minerals Protocol Area;

**Petroleum exploration permit block offers**

- 5.1.2 on the planning of a competitive tender allocation of a permit block for petroleum exploration (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and the relevant minerals programme), which relates, whether wholly or in part, to the Crown Minerals Protocol Area;

**Other petroleum exploration permit applications**

- 5.1.3 when any application for a petroleum exploration permit is received, which relates, whether wholly or in part, to the Crown Minerals Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 5.1.2;

**Amendments to petroleum exploration permits**

- 5.1.4 when any application to amend a petroleum exploration permit, by extending the land to which the permit relates, is received where the application relates, wholly or in part, to the Crown Minerals Protocol Area;

**Permit block offers for Crown owned minerals other than petroleum**

- 5.1.5 on the planning of a competitive tender allocation of a permit block for Crown owned minerals other than Petroleum (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and any relevant minerals programme) which relates, whether wholly or in part, to the Crown Minerals Protocol Area;

**Other permit applications for Crown owned minerals other than petroleum**

- 5.1.6 when any application for a permit in respect of Crown owned minerals other than petroleum is received, which relates, whether wholly or in part, to the Crown Minerals Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 5.1.5 or where the application relates to newly available acreage;



## DOCUMENTS

### 2 PROTOCOLS: CROWN MINERALS PROTOCOL

#### **Newly available acreage**

- 5.1.7 when the Secretary proposes to recommend that the Minister grant an application for a permit for newly available acreage in respect of minerals other than petroleum, which relates, whether wholly or in part, to the Crown Minerals Protocol Area; and

#### **Amendments to permits for Crown owned minerals other than petroleum**

- 5.1.8 when any application to amend a permit in respect of Crown owned minerals other than petroleum, by extending the land or minerals covered by an existing permit is received, where the application relates, wholly or in part, to the Crown Minerals Protocol Area.
- 5.2 Each decision on a proposal referred to in clause 5.1 will be made having regard to any matters raised as a result of consultation with the governance entity, and having regard to the principles of Te Tiriti o Waitangi/ the Treaty of Waitangi.

## **6 IMPLEMENTATION AND COMMUNICATION**

- 6.1 The Crown has an obligation under the Act (as provided for in minerals programmes) to consult with parties whose interests may be affected by matters described in clause 5.1 of this Crown Minerals Protocol. The Ministry will consult with the governance entity in accordance with this Crown Minerals Protocol and in accordance with the relevant minerals programme if matters described in clause 5.1 of this Crown Minerals Protocol Area may affect the interests of Ngāti Whātua Ōrākei.
- 6.2 The basic principles that will be followed by the Ministry in consulting with the governance entity in each case are:
- 6.2.1 ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues in relation to any matters under clause 5 of this Crown Minerals Protocol;
- 6.2.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 5 of this Crown Minerals Protocol;
- 6.2.3 ensuring that sufficient time is given for the participation of the governance entity in the decision making process and the consideration by the governance entity of its submissions in relation to any of the matters described in clause 5 of this Crown Minerals Protocol; and
- 6.2.4 ensuring that the Ministry will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity in relation to any of the matters described in clause 5 of this Crown Minerals Protocol.
- 6.3 Where the Ministry is required to consult the governance entity as specified in clause 6.1, the Ministry will report back in writing to the governance entity on the decision made as a result of such consultation.
- 6.4 The Ministry will seek to fulfil its obligations under this Crown Minerals Protocol by:
- 6.4.1 maintaining information on the governance entity's address and contact details as provided from time to time by the governance entity;

## DOCUMENTS

### 2 PROTOCOLS: CROWN MINERALS PROTOCOL

- 6.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Crown Minerals Protocol;
- 6.4.3 nominating relevant employees to act as contacts with the governance entity in relation to issues concerning this Crown Minerals Protocol; and
- 6.4.4 providing the governance entity with the names of the relevant employees who will act as contacts with the governance entity in relation to issues concerning this Crown Minerals Protocol.

## 7 DEFINITIONS

### 7.1 In this Crown Minerals Protocol:

**Act** means the Crown Minerals Act 1991 as amended, consolidated or substituted;

**Crown** means The Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

**Crown owned minerals** means any mineral (as defined below) that is the property of the Crown in accordance with sections 10 and 11 of the Act or over which the Crown has jurisdiction in accordance with the Continental Shelf Act 1964;

**Deed of Settlement** means the Deed of Settlement dated [ ] between the Crown and Ngāti Whātua Ōrākei;

**governance entity** means Ngāti Whātua Ōrākei Trustee Limited as trustee of the Ngāti Whātua Ōrākei Trust;

**Mineral** means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water, and includes all metallic minerals, non-metallic minerals, fuel minerals (including coal and petroleum), precious stones, industrial rocks and building stones within the meaning of the Act and a prescribed substance within the meaning of the Atomic Energy Act 1945;

**Minister** means the Minister of Energy and Resources;

**Ministry** means the Ministry of Economic Development;

**Newly available acreage** has the meaning provided in clause 3.5 of the Minerals Programme for Minerals (Excluding Petroleum) 2008;

**Ngāti Whātua Ōrākei** has the meaning set out in clause 8.5 of the Deed of Settlement;

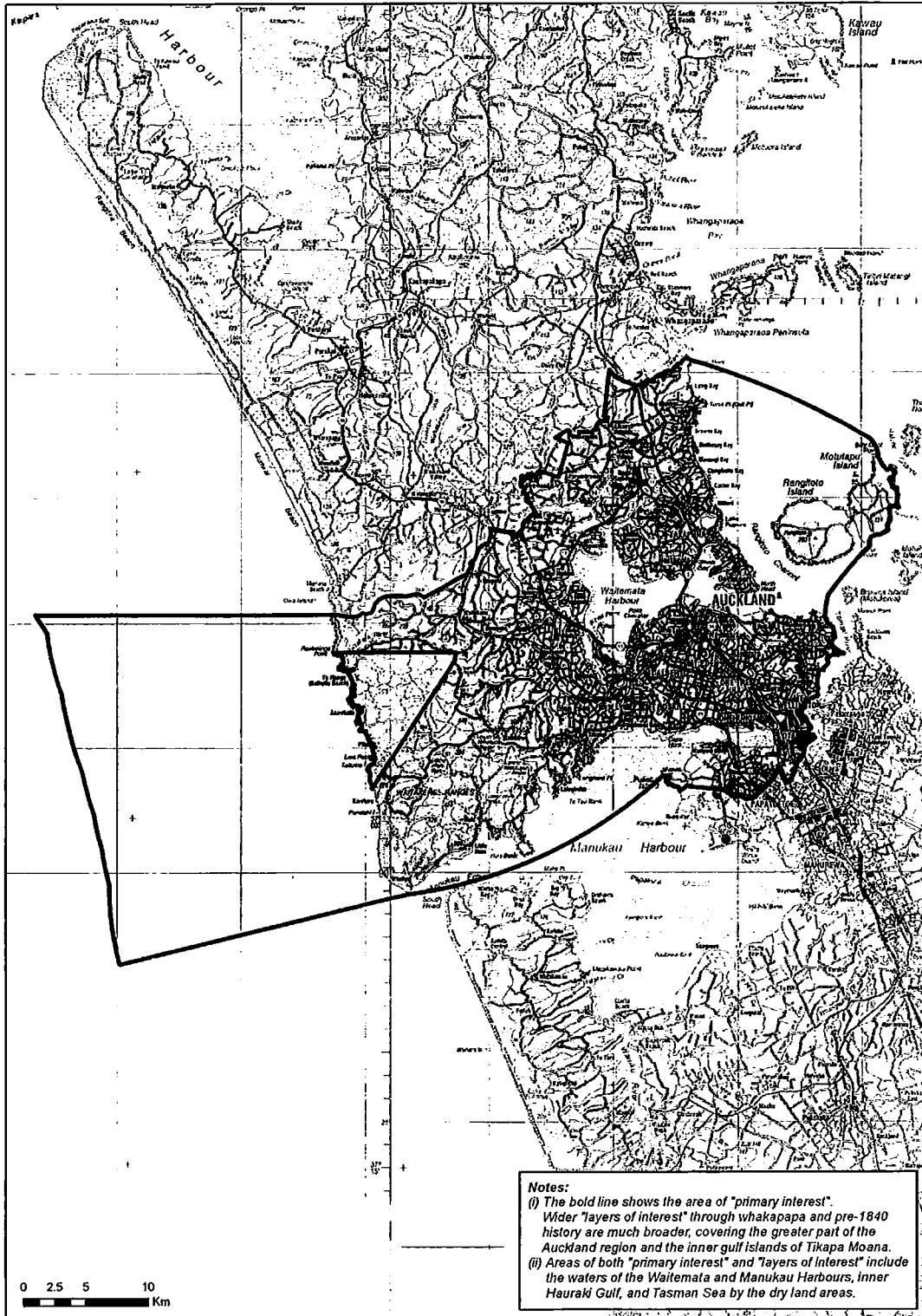
**Petroleum** means:

- (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or



2 PROTOCOLS: CROWN MINERALS PROTOCOL

PROTOCOL AREA MAP



## DOCUMENTS

### 2 PROTOCOLS: CROWN MINERALS PROTOCOL

#### ATTACHMENT B – SUMMARY OF TERMS OF ISSUE

This Crown Minerals Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

#### 1. Amendment and cancellation

- 1.1 The Minister may amend or cancel this Crown Minerals Protocol, but only after consulting the governance entity and having particular regard to its views (section 22).

#### 2. Noting

- 2.1 The existence of this Crown Minerals Protocol must be noted in minerals programmes affecting the Crown Minerals Protocol Area, but the noting:

2.1.1 is for the purpose of public notice only; and

2.1.2 does not amend the minerals programme (section 27).

#### 3. Limits

- 3.1 This Crown Minerals Protocol does not:

3.1.1 restrict the Crown from exercising its powers and performing its functions and duties, in accordance with the law and government policy, including:

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a protocol to, or interacting or consulting with, anyone the Crown considers appropriate including any iwi, hapu, marae, whanau or representatives of tangata whenua (section 23); or

3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Whātua Ōrākei (section 23); or

3.1.3 grant, create or provide evidence of an estate or interest in, or rights relating to, Crown owned minerals (section 25).

#### 4. Breach

- 4.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this Crown Minerals Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 24).

- 4.2 A breach of this Crown Minerals Protocol is not a breach of the Deed of Settlement (clause 5.6).

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀTI WHĀTUA ŌRĀKEI ON SPECIFIED ISSUES**

**1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated xx between Ngāti Whātua Ōrākei and the Crown (the “Deed of Settlement”), the Crown agreed that the Minister for Arts, Culture and Heritage (the “Minister”) would issue a protocol (the “Protocol”) setting out how the Minister and the Chief Executive for Manatū Taonga also known as the Ministry for Culture and Heritage (the “Chief Executive”) will interact with the governance entity on matters specified in the Protocol. These matters are:
- 1.1.1 Protocol Area – Part 2
  - 1.1.2 Terms of issue – Part 3
  - 1.1.3 Implementation and communication – Part 4
  - 1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5
  - 1.1.5 The role of the Minister under the Protected Objects Act 1975 – Part 6
  - 1.1.6 Effects on Ngāti Whātua Ōrākei interest in the Protocol Area – Part 7
  - 1.1.7 Registration as a collector of Ngā Taonga Tūturu – Part 8
  - 1.1.8 Board Appointments – Part 9
  - 1.1.9 National Monuments, War Graves and Historical Graves – Part 10
  - 1.1.10 History publications relating to Ngāti Whātua Ōrākei – Part 11
  - 1.1.11 Cultural and/or Spiritual Practices and Professional Services – Part 12
  - 1.1.12 Consultation – Part 13
  - 1.1.13 Changes to policy and legislation affecting this Protocol – Part 14
  - 1.1.14 Definitions – Part 15
- 1.2 For the purposes of this Protocol the governance entity is the body representative of the whānau, hapū, and iwi of Ngāti Whātua Ōrākei who have an interest in the matters covered under this Protocol. This derives from the status of the governance entity as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.3 Manatū Taonga also known as the Ministry (the Ministry) and the governance entity are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.

## DOCUMENTS

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### 2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

- 1.4 The purpose of the Protected Objects Act 1975 is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tūturu, and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.
- 1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in clause 1.1.

#### 2 PROTOCOL AREA

- 2.1 This Protocol applies across the Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the "Protocol Area").

#### 3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section 22 of the Ngāti Whatua Orakei Claims Settlement Act ("the Settlement Legislation") that implements the Ngāti Whātua Ōrākei Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 A summary of the provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued is set out in Attachment B of the Protocol.

#### 4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will maintain effective communication with the governance entity by:
- 4.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;
  - 4.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;
  - 4.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry managers and staff;
  - 4.1.4 meeting with the governance entity to review the implementation of this Protocol at least once a year, if requested by either party;
  - 4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol;
  - 4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
  - 4.1.7 including a copy of the Protocol with the governance entity on the Ministry's website.

#### 5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

##### General

## DOCUMENTS

### 2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
- 5.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand;
  - 5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand;
  - 5.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand;
  - 5.1.4 notify the governance entity in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
  - 5.1.5 notify the governance entity in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

#### **Applications for Ownership**

- 5.2. If the governance entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 5.3 If there is a competing claim or claims lodged in conjunction with the governance entity's claim of ownership, the Chief Executive will consult with the governance entity for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the governance entity may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.



2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

**Applications for Custody**

- 5.5 If no ownership application is made to the Māori Land Court for any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Whātua Ōrākei origin found elsewhere in New Zealand by the governance entity or any other person, the Chief Executive will:
- 5.5.1 consult the governance entity where there is any request from any other person for the custody of the Taonga Tūturu;
  - 5.5.2 consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and
  - 5.5.3 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

**Export Applications**

- 5.6 For the purpose of seeking an expert opinion from the governance entity on any export applications to remove any Taonga Tūturu of Ngāti Whātua Ōrākei origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 5.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Ngāti Whātua Ōrākei origin from New Zealand, the Chief Executive will consult the governance entity as an Expert Examiner on that application, and notify the governance entity in writing of his or her decision.

**6. THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975**

- 6.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the governance entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the governance entity as an Expert Examiner, the Minister may consult with the governance entity where a person appeals the decision of the Chief Executive to:
- 6.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or
  - 6.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand.
- 6.2 The Ministry will notify the governance entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the governance entity was consulted as an Expert Examiner.

**7. EFFECTS ON NGĀTI WHĀTUA ŌRĀKEI'S INTERESTS IN THE PROTOCOL AREA**

- 7.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects Ngāti Whātua Ōrākei interests in the Protocol Area.
- 7.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Whātua Ōrākei interests in the Protocol Area.

## DOCUMENTS

### 2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

7.3 Notwithstanding clauses 7.1 and 7.2 above the Chief Executive and governance entity shall meet to discuss Ngāti Whātua Ōrākei interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

#### 8. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

8.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tūturu.

#### 9. BOARD APPOINTMENTS

9.1 The Chief Executive shall:

9.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

9.1.2 add the governance entity's nominees onto Manatū Taonga/Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and

9.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

#### 10. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

10.1 The Chief Executive shall seek and consider the views of the governance entity on any national monument, war grave or historical grave, managed or administered by the Ministry, which specifically relates to Ngāti Whātua Ōrākei interests.

10.2 The Chief Executive will provide for the marking and maintenance of any historic war grave identified by the governance entity, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

#### 11. HISTORY PUBLICATIONS RELATING TO NGĀTI WHĀTUA ŌRĀKEI

11.1 The Chief Executive shall:

11.1.1 provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāti Whātua Ōrākei; and

11.1.2 where reasonably practicable, consult with the governance entity on any work the Ministry undertakes that relates substantially to Ngāti Whātua Ōrākei:

(a) from an early stage;

(b) throughout the process of undertaking the work; and

(c) before making the final decision on the material of a publication.

11.2 The governance entity accepts that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the

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### 2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

governance entity, is entitled to make the final decision on the material of the historical publication.

#### 12. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

12.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngāti Whātua Ōrākei within the Protocol Area, the Chief Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.

12.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services.

12.3 The procurement by the Chief Executive of any such services set out in Clauses 12.1 and 12.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

#### 13. CONSULTATION

13.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the governance entity in each case are:

13.1.1 ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;

13.1.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;

13.1.3 ensuring that sufficient time is given for the participation of the governance entity in the decision making process including the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;

13.1.4 ensuring that the Chief Executive will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity in relation to any of the matters that are the subject of the consultation; and

13.1.5 report back to the governance entity, either in writing or in person, in regard to any decisions made that relate to that consultation.

#### 14 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

14.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impact upon this Protocol, the Chief Executive shall:

14.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

14.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and

14.1.3 report back to the governance entity on the outcome of any such consultation.

2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

15. DEFINITIONS

15.1 In this Protocol:

**Chief Executive** means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive

**Crown** means the Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement

**Expert Examiner** has the same meaning as in section 2 of the Act and means a body corporate or an association of persons

**Found** has the same meaning as in section 2 of the Act and means:

in relation to any Taonga Tūturu, discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tūturu and which suggest that the Taonga Tūturu was last in the lawful possession of a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meanings

**governance entity** means Ngāti Whātua Ōrākei Trustee Limited as trustee of the Ngāti Whātua Ōrākei Trust

**Ngā Taonga Tūturu** has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu

**Ngāti Whātua Ōrākei** has the meaning set out in clause 8.5 of the Deed of Settlement

**Protocol** means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol

**Taonga Tūturu** has the same meaning as in section 2 of the Act and means an object that—

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been,—
  - (i) manufactured or modified in New Zealand by Māori; or
  - (ii) brought into New Zealand by Māori; or
  - (iii) used by Māori; and
- (c) is more than 50 years old.

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2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

**ISSUED** on

**SIGNED** for and on behalf of **THE SOVEREIGN** in right of New Zealand by the Minister for Arts, Culture and Heritage:

**WITNESS**

(  
\_\_\_\_\_  
Name:

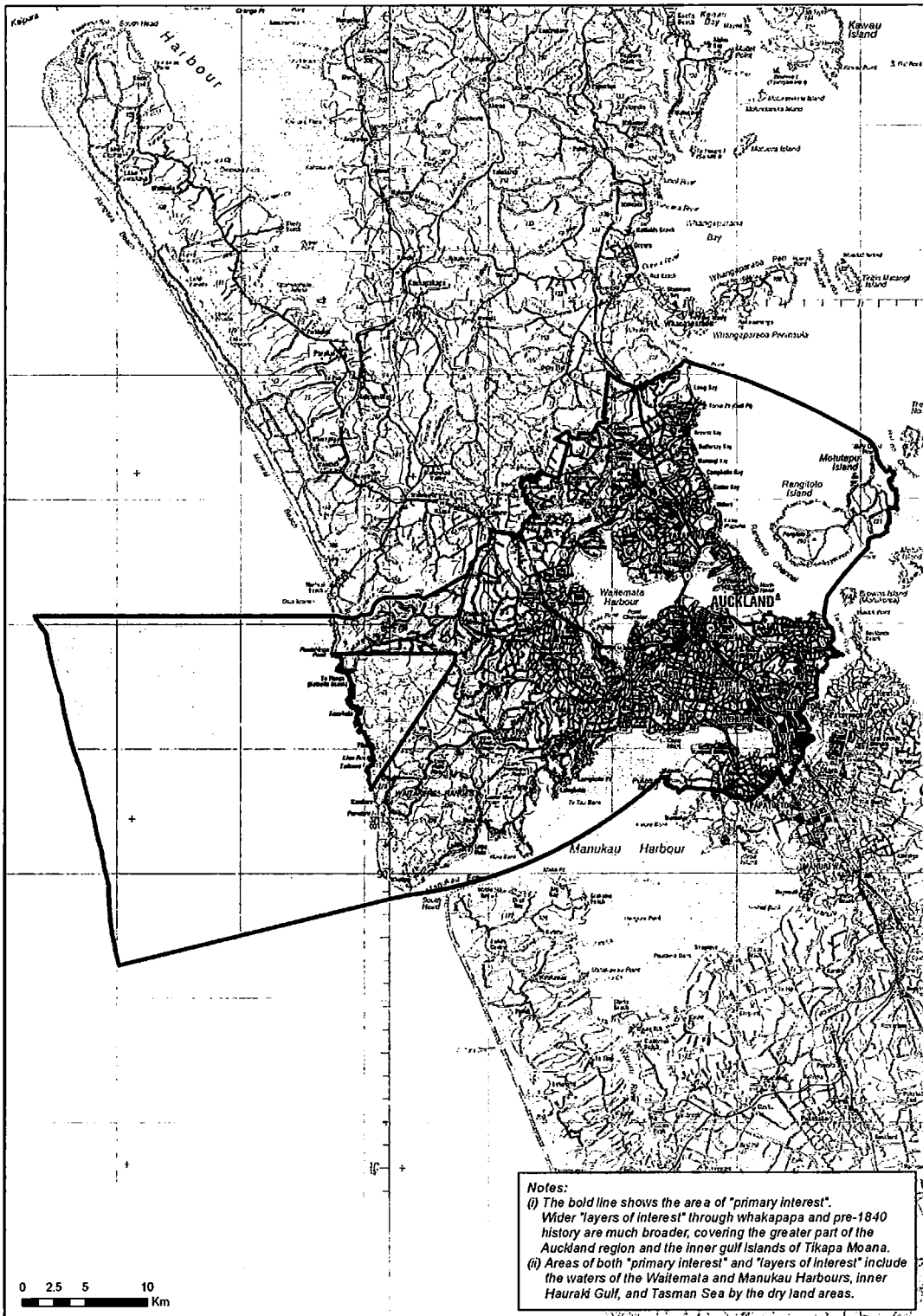
Occupation:

Address:

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2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

PROTOCOL AREA MAP



AE03929 17 August 2011

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### 2 PROTOCOLS: TAONGA TŪTURU PROTOCOL

#### ATTACHMENT B - SUMMARY OF TERMS OF ISSUE

This Protocol is issued subject to the provisions of the deed of settlement and the settlement legislation. These provisions are set out below.

#### 1. **Amendment and cancellation**

- 1.1 The Minister may amend or cancel this Protocol, but only after consulting the governance entity and having particular regard to its views (section 22).

#### 2. **Limits**

- 2.1 This Protocol does not:

- 2.1.1 restrict the Crown from exercising its powers and performing its functions and duties, in accordance with the law and government policy, including:

- (a) introducing legislation; or
- (b) changing government policy; or
- (c) issuing a protocol to, or interacting or consulting with, anyone the Crown considers appropriate including any iwi, hapu, marae, whanau or representatives of tangata whenua (section 23); or

- 2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Whātua Ōrākei (section 23); or

- 2.1.3 grant, create or provide evidence of an estate or interest in, or rights relating to, taonga tūturu (section 25).

#### 3. **Breach**

- 3.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 24).

- 3.2 A breach of this Protocol is not a breach of the deed of settlement clause 5.6).

**3 LEASES FOR NZDF LEASEBACK PROPERTIES**





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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

#### SCHEDULE A

##### ITEM 1 THE LAND

All that parcel of land being the Land specified and described in Schedule C.

##### ITEM 2 THE COMMENCEMENT DATE

The commencement date of this Lease shall be the                      day of                      2012.

##### ITEM 3 ANNUAL RENTAL

###### 3.1 Initial Term

The rental is for each of the years within the Initial Term as set out in Schedule E and has been prepaid by the Lessee to the Lessor in one sum as at the Commencement Date of this Lease.

###### 3.2 Renewal Term

For the first seven years of the Renewal Term and each seven year rent review period following, as determined in accordance with clause [3.01] and/or clause 4.05 as the case may be, of schedule B (plus GST if any) payable by equal monthly instalments in advance on the first day of each and every month. The first monthly instalment for the first rent review period of the Renewal Term shall be paid on the first day of [ ].

##### ITEM 4 TERM OF LEASE

###### 4.1 Initial Term

35 years from the Commencement Date, provided however the Lessee may upon the 10<sup>th</sup> anniversary of the Commencement Date or any subsequent anniversary of that date within the Initial Term through to and including the 29<sup>th</sup> anniversary of the Commencement Date, and at its discretion, terminate its interest under this Lease in respect of all of the Lease through the putting of the Defence Put Option under clause 4.21 during that part of the Initial Term.

###### 4.2 Renewal Term

The Lessee shall have one right of renewal for a further term of 115 years provided however the Lessee may during such Renewal Term terminate its interest under this Lease on the giving of 12 months prior written notice to the Lessor at any time during the Renewal Term.

##### ITEM 5 LESSEE OUTGOINGS

5.1 Rates, levies, charges, assessments, duties or fees payable to any local, territorial, governmental and any other statutory authority excluding only taxes and/or other charges levied against the Lessor in respect of its ownership and interest in the Land.

5.2 Charges for water, gas, electricity, telephones and other utilities or services.

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**3 LEASES FOR NZDF LEASEBACK PROPERTIES**

- 5.3 Rubbish collection charges.
- 5.4 All costs associated with the repair, maintenance or replacement of any fencing on the Land, subject however to clause 2.10(a) of Schedule B.

**ITEM 6 PERMITTED USE**

- 6.1 For the Initial Term, for the general purposes of the New Zealand Defence Force (including but not limited to housing) or designation for defence purposes issued by the Minister of Defence applying to the Land, and/or for such other use or uses as the Lessee in its sole discretion determines.
- 6.2 For the Renewal Term, for the general purposes of the New Zealand Defence Force (including but not limited to housing) or designation for defence purposes issued by the Minister of Defence applying to the Land, subject however to clause 4.02 of Schedule B.

**ITEM 7 RIGHTS OF RENEWAL**

One right to a further term of 115 years.

**ITEM 8 RENT REVIEW DATES**

Seven yearly as from and including the commencement date of the Renewal Term.

**ITEM 9 LESSOR'S IMPROVEMENTS**

Nil.

**ITEM 10 LESSEE'S IMPROVEMENTS**

Lessee's Improvements shall mean all improvements on the Land of any kind whatsoever as at the Commencement Date of this Lease and any time after that, including buildings, infrastructure in relation to services, sealed yards, paths, landscape structures, fences and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease. The Lessee's Improvements include in particular those buildings listed in Schedule F attached.

**ITEM 11 CLAUSE 3.04(b) CHARGEHOLDER'S NOTICE**

**SCHEDULE \*\*\***

[That parcel of land containing ]

.....

**(LENDER EXECUTION)**

/ / 2012

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3 LEASES FOR NZDF LEASEBACK PROPERTIES

ITEM 12 CLAUSE 3.03(c) CHARGEHOLDER'S NOTICE

To: [The Lessor]  
(hereafter called "**the Lessor**")

And to: [The Lessee]  
(hereafter called "**the Lessee**")

From: [Mortgagee/Chargeholder]  
(hereafter called "**the Lender**")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("**the Security**") given by the Lessor over the land described in the Schedule below ("**the Land**") it had notice of and agreed to be bound by the provisions of this Lease including in particular clause 3.03(b) and (c) of the Lease of the Land and that in particular it agrees that despite any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (a) Will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (b) Will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease;
- (c) Agrees that this acknowledgement is irrevocable.

ITEM 13 ADDRESS FOR SERVICE

Lessor: [insert the name of the Ngati Whatua Orakei Governance entity]

AUCKLAND  
Attn: General Manager

Facsimile:

Lessee: **CHIEF OF DEFENCE FORCE**  
New Zealand Defence Force  
Defence House  
2/12 Aitken Street  
WELLINGTON

Facsimile: (04) 496-0006

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

#### SCHEDULE B

#### PART I - PRELIMINARY

#### 1.00 DEFINITIONS AND INTERPRETATION

#### 1.01 In this Lease:

- (a) The expression "**the Lessor**" shall include and bind:
- (i) the persons executing this lease as Lessor; and
  - (ii) any Lessor for the time being under it; and
  - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.
- (b) The expression "**the Lessee**" shall include and bind:
- (i) the person executing this lease as Lessee;
  - (ii) all the Lessees for the time being under it; and
  - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;

and the expression "**the Lessee**" shall where the context requires include the Lessee's agents, personnel, contractors and invitees and any person on the Land under the control or direction of the Lessee.

- (iv) Words importing the singular or plural number shall include the plural or singular number respectively.

**1.02 "Deed of Settlement"** means the Deed of Settlement entered into by Ngati Whatua Orakei, Ngati Whatua Orakei Trustee Limited and Her Majesty the Queen in right of her Government in New Zealand in regard to the North Shore redress, which Deed is dated

**1.03 "Existing Tenancies"** means all existing leases, licences and other occupancy agreements in respect of the Land, which are current as at the commencement date of this Lease (if any).

**1.04 "Goods and Services Tax" or "GST"** means tax levied in accordance with the Goods and Services Tax Act 1985 ("**GST Act**") or any tax in the nature of a Goods and Services Tax.

**1.05 "Government Work"** means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown including any Crown entity as defined in the Crown Entities Act 2004 or any Minister of the Crown for any public purpose.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

- 1.06 "Initial Term or Term " means the initial term of the Lease which commences on the Commencement Date and expires 35 years from the Commencement Date.
- 1.07 "Lease" means, unless the context otherwise requires, this lease and any new lease or Renewal Term granted in renewal of it.
- 1.08 "Lessee's Improvements" shall mean all improvements on the Land as are specified in Item 10 of Schedule A.
- 1.09 "Lessee's Outgoings" means all outgoings which the Lessee is obliged to pay specified in Item 5 of Schedule A.
- 1.10 "Renewal Term" means the renewal term of 115 years.
- 1.11 "Settlement Mortgage" means the mortgage granted by the Lessor to the Crown over the Land, as provided for under the Deed of Settlement.
- 1.12 "The Land", "The Commencement Date", "Annual Rental", "Initial Term", "Renewal Term" and "Permitted Use" shall have the meanings ascribed to them in Schedule A.
- 1.13 "Working Day" means any day other than a Saturday or Sunday, or statutory holiday, or anniversary holiday in Wellington or Auckland.
- 1.14 The term "to sublet" shall include the granting of a licence to occupy the Land or part thereof and "subletting" and "sublease" shall be construed accordingly.
- 1.15 References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.
- 1.16 A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.17 Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.
- 1.18 Any reference in this Schedule B to any clause of this document shall be a reference to that clause within Schedule B, unless the context otherwise states i.e. refers specifically to an item or clause referred to in Schedule A of this document.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

#### PART II - LESSEE'S COVENANTS

##### 2.00 LESSEE'S COVENANTS

##### 2.01 PAYMENT OF ANNUAL RENT

The Lessee shall pay the annual rent without deduction in the manner and at the times provided in Item 3 of Schedule A, noting however, that all rental for the Initial Term has been prepaid by the Lessee in full as at the Commencement Date of this Lease. All payments of rent during the Renewal Term shall be paid by direct bank payment or as the Lessor may direct.

##### 2.02 PAYMENT OF LESSEE OUTGOINGS

- (a) The Lessee shall pay the Lessee Outgoings in respect of the Land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.
- (c) If required by an Authority, the Lessee shall install and maintain at the Lessee's costs any meter or other measuring device necessary for the proper charging of the services, utilities or amenities supplied to or used by the Lessee on the Land.

##### 2.03 USE OF LAND

The Lessee:

- (a) shall not, without the prior written consent of the Lessor first had and obtained, use the Land for any purpose other than the Permitted Use described in Item 6.1 of Schedule A, during the Initial Term; and
- (b) shall not during the Renewal Term use the Land for any purpose other than the Permitted Use described in Item 6.2 of Schedule A, but subject to clause 4.02, and shall not otherwise be permitted to change that Permitted Use; and
- (c) acknowledges that it has entered into this Lease in reliance on its own judgement and not in reliance on any representation or warranty by the Lessor regarding use of the Land.

##### 2.04 COMPLIANCE WITH LAW

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

#### 2.05 AVOIDANCE OF DANGER

The Lessee shall:

- (a) Take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard, provided however any goods associated with defence purposes stored or used on the Land, shall not be regarded as being in breach of this clause;
- (b) Promptly remedy any danger or hazard that may arise on the Land, provided however this shall not extend to any danger or hazard that has arisen through storms, adverse weather, seismic, volcanic, geothermal, or similar activity, or any other act of god, to the intent that the Lessor shall be responsible for any remedial work (to the extent such resulting damage, danger or hazard can be reasonably remediated) required as a result of such events;
- (c) At all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with;
- (d) Comply with any obligations imposed on the Lessee under this Lease or by statute, regulation, bylaw or other laws relating to the use or occupation of the Land; and
- (e) The Lessee accepts that the Lessor may having given prior reasonable notice (being not less than ten (10) working days) to the Lessee, enter onto the Land at such times as have been prearranged with the Lessee, for the purpose of all remedial work referred to in clause 2.05(b), provided however the Lessor shall minimise any disruption to the Lessee while carrying out such remedial work, and shall comply with any security requirements advised by the Lessee.

#### 2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS AND GROUNDS

The Lessee shall be responsible, at the Lessee's own expense, for maintaining the Lessee's Improvements on the Land in such order, condition and repair during the continuance of this Lease as the Lessee requires having regard to the Lessee's use of the Lessee's Improvements, provided however the Lessee will not in any event allow any Lessee Improvement to become a danger or nuisance or to fall into a dilapidated or unsightly condition (other than temporarily so in the event of damage, and pending repair or removal) during the Term of the Lease.

#### 2.07 NO LESSOR MAINTENANCE

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land unless the Lessor, or anyone under the Lessor's control, has caused any damage to the Lessee's Improvements in which case the Lessor shall remedy such damage.



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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

#### 2.08 LESSEE'S FURTHER MAINTENANCE AND REPAIR OBLIGATIONS

- (a) The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the reasonable satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.
- (b) The Lessee shall also take steps to keep the grounds comprised in the Land, in reasonable order and lawns mowed.

#### 2.09 INSURANCE

The Lessee may elect at its own discretion as to whether it will insure any Lessee's Improvements on the Land, and if so against such risks as it also elects, to the intent that the Lessee may choose at its option to fully or partly self-insure, and whether to reinstate or not any damaged or destroyed Lessee's Improvements, subject to the Lessee's obligations contained in the provisos under clauses 2.06 and 2.15.

#### 2.10 SUNDRY ACKNOWLEDGEMENTS

The Lessee and Lessor acknowledge:

- (a) That the Lessor shall not be liable to erect or maintain any dividing or boundary fence, however the Lessor will contribute a one half share of costs towards the cost of the erection or replacement and maintenance of any dividing or boundary fence or portion thereof either now or in the future, between the Land including any separate block of land within the Land, and any adjoining land which is or becomes the property of the Lessor;
- (b) That subject to clause 2.10(a), the Lessee may at its own cost and expense in all things fence any of the internal and/or external boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.

#### 2.11 GST

- (a) The Lessor and the Lessee agree that the supply of the Land under this Lease for the Initial Term for which the rental is paid on the Commencement Date by the Lessor to the Lessee is the supply of "land" as defined in and for the purposes of the GST Act and so, based on the representations in paragraph (b), the transfer is zero rated under section 11(1)(mb) of the GST Act and any amount payable under clause 4.20 or 4.21 is also zero rated accordingly.
- (b) The Lessee confirms that on the Commencement Date:
  - (i) it is a registered person for the purposes of the GST Act;
  - (ii) it is acquiring the Lease of the Land with the purpose of making taxable supplies;
  - (iii) it does not intend to use the Land supplied as a principal place of residence either for itself or for an associated person.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

- (c) The Lessor and Lessee will co-operate in approaching Inland Revenue for confirmation that the rental for the supply of the Land under the Lease for the Initial Term is zero-rated. If, as a result of that approach or otherwise, it is determined that GST is charged on the rental for the supply of the Land under the Lease for the Initial Term and is payable by the Lessor or an amount payable under clause 4.20 or 4.21 results in GST being payable by the Lessee:
- (i) the payer of the relevant payment under the Lease will, on demand, pay to the recipient an amount equal to that GST; and
  - (ii) the Lessor will issue a tax invoice or credit note (as defined in the GST Act and as the case may be) to the Lessee.
- (d) In the case of rental for the Renewal Term or any other payments payable by the Lessee hereunder, the Lessee shall pay to the Lessor or as the Lessor shall direct the GST (if any) payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST (if any) in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment (if any) shall be payable on demand, upon the provision in each case of a valid GST invoice for such payment.
- (e) Where and to the extent that the Lessee intends to commence using any part of the Land for the purposes of accommodation in dwellings (as defined in the GST Act):
- (i) the Lessee must notify the Lessor, at least 12 months before the date any such use commences, such notice to include details as to the extent of such use;
  - (ii) where as a result of the change in use, the Lessor is required to account for output tax pursuant to section 21D(3)(b) and 21A of the GST Act (the "Uplift Amount"), the annual rental will, from the date that output tax is due and until the next review date, be increased by an amount equal to 6% of the Uplift Amount. This process shall be repeated, on each date an Uplift Amount is required to be accounted for; and
  - (iii) on each review of rental, the annual rental shall be calculated in accordance with clause 4.05(b), without reference to the Uplift Amount. Once the rental payable on each review date is agreed or determined in accordance with the provision of this lease, then that annual rental shall be increased by a sum equal to 6% of the sum of all Uplift Amounts which have been paid prior to the relevant review date. This process shall be repeated on each review date during the Renewal Term.

#### 2.12 NO INDEMNITY

For clarity, the Lessee does not provide any indemnity to the Lessor in regard to any matter under this Lease.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

#### 2.13 LESSEE'S ACKNOWLEDGEMENT

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused or contributed to by the act or omission of the Lessor or persons acting under the control of the Lessor.

#### 2.14 RATING ROLL

The name of the Lessee shall be entered into the rating information database and the district valuation roll as the ratepayer in respect of the Land unless there is/are (a) sublease(s) from the Lessee for a term (including renewals) of not less than 10 years imposing an equivalent obligation upon such registered sublessees as is provided for in section 11 of the Local Government (Rating) Act 2002. The Lessee shall duly and punctually pay all rates payable by the Lessee in respect of the Land at the time when the same become due and payable.

#### 2.15 REPAIR, REINSTATEMENT, OR REBUILDING OF IMPROVEMENTS

In the event any of the Lessee's Improvements are destroyed or damaged, then the Lessee shall have an absolute discretion as to the extent to which and whether at all, and when it will or may repair, reinstate or rebuild (as the case may be) any of the Lessee's Improvements on the Land. Should the Lessee elect to reinstate and/or rebuild then it shall obtain all formal consents required for that purpose, and carry out all associated work in compliance with the relevant consents. The Lessee will however in any event remove from the Land prior to expiry of the Lease any substantially damaged or destroyed part of the Lessee's Improvements and will otherwise comply with the proviso in clause 2.06.

### PART III - LESSOR'S COVENANTS

#### 3.00 LESSOR'S COVENANTS

#### 3.01 RENEWED TERM

- (a) If the Lessee has given to the Lessor written notice to renew the term of this Lease at least six calendar months before the end of the Initial Term, then the Lessor will grant a Renewal Term for this Lease in respect of the Land from the renewal date as follows:
  - (i) The annual rental for the initial rent review period shall be determined in accordance with clause 4.05.
  - (ii) Subject to the provisions of the preceding subclause, the Renewal Term of the Lease shall be upon and subject to the covenants and agreements expressed and implied in this Lease except that the term of this Lease shall expire on the final expiry date of the Renewal Term.
  - (iii) The annual rent shall be subject to review during the Renewal Term of the Lease at intervals of seven years as from and including the

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

commencement date of the Renewal Term as provide for in clause 4.05.

#### 3.02 QUIET ENJOYMENT

The Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

#### 3.03 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS

The Lessee may construct further Lessee's Improvements, and/or make alterations or additions to Lessee's Improvements (including relocation of Lessee's Improvements) to the intent that the Lessee shall have an absolute discretion regarding any construction alterations or additions made to, and/or relocation of the Lessee's Improvements and shall not be required to obtain consent from the Lessor in respect of these matters.

#### 3.04 LESSOR'S IMPROVEMENTS

For clarity the parties record that there are no Lessor's improvements.

#### 3.05 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
- (i) despite any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and beyond, and irrespective of how such Lessee's Improvements are annexed to the Land;
  - (ii) the Lessee has a discretion as to whether or not the Lessee's Improvements are to be insured by the Lessee in its own name; and
  - (iii) when any Lessee's improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee but subject in any event to the Lessee's obligations under clause 2.06 and property in any insurance proceeds is also solely with the Lessee.
- (b) Should the Lessor at any time during the Lease propose to grant any mortgage or charge over the Land (other than the Settlement Mortgage) then, prior to doing so, it shall first do the following:
- (i) Advise the Lessee in writing of its intention to mortgage or charge its interests in the Land as soon as it takes steps to arrange such mortgage or charge.
  - (ii) Have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 12, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such

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acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor;

- (c) That the Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon condition that the Lessee makes good any damage to the Land, which arises due to such demolition or removal.
- (d) The Lessee will, provided it has done the following, be regarded as having complied with its obligations under clause 3.04(c).
  - (i) removed from the surface of the Land all debris from any demolition;
  - (ii) capped services (where these have not been removed);
  - (iii) cut off any Lessee Improvements which have been removed at the ground level.

#### 3.06 GROUND WORKS

- (a) Despite anything to the contrary in clauses 3.02 or 3.04(d), the Lessee shall not:
  - (i) Make any excavation of the Land (other than in association with any maintenance of, alterations and additions to, the Lessee's Improvements under clause 3.02 of this Lease) where such excavation would require a resource consent without first obtaining the Lessor's written approval which shall not be unreasonably withheld; or
  - (ii) Knowingly conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
  - (iii) Remove any boundary-fence on any external perimeter of any separate block of land comprised within the Land or retaining works except where this is necessary or conducive to the conduct of and/or consistent with the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed alteration or interference;
  - (iv) Make any sub-soil installation, alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of and/or consistent with the Permitted Use and the Lessor has first been given not less than twenty (20) working days' notice in writing of the proposed installation, alteration or interference;

without, in each case, the Lessor's prior written approval, although this will not be required where the works are reasonably necessary or conducive to the conduct of and/or consistent with the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions;

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No notice or consent shall be required however where any such work of the type contemplated in this clause is required in the event of an emergency.

- (b) Should the Lessor either fail to give an approval within 14 days of being requested to do so or give an approval which is subject to conditions the Lessee considers unreasonable, then the matter shall be referred to a registered civil engineer agreed upon by the parties for his or her expert determination. Should the parties be unable to agree upon the appointment of an engineer, then either party shall be at liberty to make written application to the President for the time being of the Institute of Professional Engineers of New Zealand to appoint an engineer and any appointment so made shall be final and binding on the parties. The engineer shall act as an expert in determining the issue(s) and not as an arbitrator and the engineer's decision shall be final and binding on the parties. The engineer's costs shall be met in equal shares by the parties unless the engineer otherwise so determines.

#### 3.07 DESIGNATION

The Lessor covenants that it consents to the Lessee maintaining a designation for defence purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the Lessee giving any notice to terminate this Lease, should the Lessee elect to so terminate, then the following shall apply. The parties shall work together in good faith with a view to ensuring that the process for applying to have the designation uplifted commences, following such notice, promptly so as to ensure that the designation is uplifted as soon as possible following the expiry date of the Lease.

#### 3.08 PROVISION OF CERTAIN NOTICES TO THE LESSEE

Whenever the Lessor receives any notice from any local or governmental authority concerning the payment of local authority rates or the government valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant government department, as the case may be.

#### 3.09 RECLASSIFICATION OF LAND

- (a) The Lessor shall not take any steps to reclassify the Land from General Land under the Te Ture Whenua Maori Act 1993 or any other legislation which could result in the Land being treated other than as ordinary freehold land not owned by Maori. The Lessor further warrants and undertakes that it will take all necessary steps to oppose any attempt by any other person to reclassify the Land from General Land under that Act or under any other legislation which could result in the Land being treated other than as ordinary freehold land not owned by Maori.
- (b) The Lessor shall indemnify and keep the Lessee indemnified from and against any action claim, demand, loss (including loss of profit or fall in value of the Lessee's leasehold interest in the Land under this lease) damage, cost, expense or liability whatsoever which the Lessee may suffer, incur, or become liable for in the event that the Land is reclassified as anything other than General Land under the Te Ture Whenua Maori Act 1993 (or consequent upon such reclassification) or in the event that the security of tenure of the Lessee's leasehold interest in the Land granted at the

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Commencement Date pursuant to this Lease is similarly undermined, impaired, prejudiced or otherwise affected during the Term.

#### 3.10 BENEFITS TO LAND NOT TO BE RESTRICTED OR CANCELLED

- (a) The Lessor shall not cancel, surrender or modify any easements or other like rights or interests whether registered or not which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.
- (b) The Lessee may as of right however grant or receive the benefit of any easements or other like rights or interest whether registered or not against and/or in respect of the Lessee's lease hold interest in this Lease. The Lessee reserves the right to have any such interest affecting its leasehold interest in the Land, also mirrored in the freehold interest in the Land and the Lessor will at the Lessee's request take such steps and sign such documents as are necessary to achieve this.

## PART IV – MUTUAL COVENANTS

### 4.00 MUTUAL COVENANTS

#### 4.01 LESSOR TRANSFER

The Lessor shall be permitted to transfer its interests under this Lease at any time during the Initial Term or Renewal Term of this Lease subject, however, to the following. The Lessor covenants for the benefit of the Lessee that it will ensure that the Lessor's interests in the Land are transferred subject to this Lease, to the intent that any transferee shall be bound by this Lease.

#### LESSEE ASSIGNMENT

- (a) The Lessee shall not be permitted to assign its interests under this Lease to the intent that assignment is prohibited.
- (b) The Lessee shall not be permitted to subdivide its leasehold interests in the Land.

#### 4.02 SUBLETTING

##### Initial Term

- (a) For the Initial Term of this Lease, the Lessee shall be permitted as of right, to grant any sublease, licence or any other occupancy right in respect of any part or parts of the Land for such uses as the Lessee permits.

##### Renewal Term

- (b) For the Renewal Term, the Lessee shall have the same rights as set out in clause 4.02(a) but subject to the following provisos. No term (including any renewals) granted shall exceed six (6) years and no more than 40% of the net lettable buildings by area on the Land, or 40% of the Land area, may be subject to any such sublease, licence or any other occupancy right at any point in time.

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- (c) In respect of any additional sublease, licence or other occupancy right which exceeds the 40% thresholds under clause 4.02(b) but does not exceed 60% of the net lettable buildings by area on the Land, or 60% of the Land area, then the following shall apply. The Lessee may upon obtaining the Lessor's consent which will not be unreasonably withheld, grant any such additional sublease, licence, or other occupancy right, in this category, for such uses as the Lessee permits, provided that no term (including any renewals) shall exceed 6 years.
- (c) In respect of any proposed sublease, licence or other occupancy right which exceeds the 60% thresholds in clause 4.02(c), then the following shall apply. The Lessee shall only be permitted to grant such sublease, licence or other occupancy right for such use as the Lessee permits, provided the Lessee has first obtained the written approval of the Lessor, which approval may be given or withheld at the Lessor's sole discretion.
- (d) The above provisions in clause 4.02 shall be further subject to the proviso that there shall be no sublease or licence in existence in respect of the Land which cannot be terminated by the Lessee (in its capacity as sublessor) concurrently with any termination of this Lease by the Lessee and that on termination of the Lease by the Lessee, vacant possession shall be given to the Lessor.
- (e) The parties acknowledge in this regard their intentions that the Lessee has an opportunity to generate short term income in respect of the Land to set off against its costs of occupation.

#### 4.03 LESSOR MAY REMEDY LESSEE DEFAULT

- (a) Subject to clause 4.03(c), should the Lessee default in the observance or performance of any of the Lessee's obligations under this Lease, and should the Lessor have first served not less than twenty-one (21) Working Days' written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor acting reasonably, in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee.
- (b) Any notice served under the provisions of clause 4.03(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.
- (c) The Lessor in entering upon the Land pursuant to its rights under clause 4.03(a) shall do so at its own risk and shall only enter upon the Land at such times as the Lessee has approved and subject to compliance with any reasonable conditions imposed by the Lessee, including in particular those in relation to security.

#### 4.04 LESSEE'S IMPROVEMENTS

The parties acknowledge that:



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- (a) The Lessee not being in material breach of the Lease may, either prior to or on the expiry of this Lease, remove all or any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed prior to the expiration or sooner determination of the Lease or within such further time as the parties may agree, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal elected by the Lessee.
- (b) In the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land as a consequence of such removal as provided in clause 3.05(d).
- (c) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease despite any rule of law or equity to the contrary.
- (d) In any review (if any) of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental.
- (e) Despite the generality of the provisions of clause 4.04(a), and subject in any event to clause 3.06, the Lessee shall not upon expiry of the Lease, remove any boundary fencing or any sub-soil drainage or reticulated sub-soil service(s) or any retaining walls on the Land without the prior written consent of the Lessor.
- (f) For the avoidance of doubt, nothing in this Lease shall obligate the Lessee to remove the property referred to in this clause 4.04(e), should the Lessee decide to abandon such property to the Lessor upon the expiration of this Lease.
- (g) All Lessee's Improvements remaining upon the Land after the termination date or such further period as the parties may agree, shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor, subject to any alternate agreement which the parties may have reached in relation to any particular Lessee's Improvement.

#### 4.05 RENT REVIEW

- (a) There shall be no review of rental during the Initial Term. Should the Lessee elect to renew the Lease for the Renewal Term then the annual rental shall be reviewed by the Lessor on commencement of the Renewal Term and at intervals of seven (7) years as from and including the commencement date of the Renewal Term in clause 3.2 of Schedule A.
- (b) The annual rental shall on each review be calculated as such amount as is equivalent to [6%] of the market value of the Land as at the relevant review date, in each case.

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- (c) The market value of the Land as at the relevant review date shall be reviewed for the purposes of applying the percentage amount referred to in clause 4.05(b) to determine the revised annual rental as follows:
- (i) the Lessor shall commence a review by not earlier than three (3) months prior to a review date or at any time up to six months after any review date by giving written notice to the Lessee specifying the then current market value for the Land considered by the Lessor to be the current market value for the Land as at the relevant review date. That notice shall also state that the Lessee is required under the provisions of the Lease to respond in writing within 28 days of receipt of the Lessor's notice;
  - (ii) if, by written notice to the Lessor within twenty-eight (28) days after receipt of the Lessor's notice, the Lessee disputes that the then current market value of the Land is as aforesaid, then the current market value of the Land shall be determined in accordance with the provisions of clause [4.05(c)(vii)];
  - (iii) the current market value of the Land so determined or accepted shall be the current market value of the Land for the purposes of establishing the revised annual rental in accordance with clause 4.05(b) from the review date or the date of the Lessor's notice if such notice is given later than six (6) months after the review date;
  - (iv) pending the determination of the current market value of the Land and consequential revised annual rental having regard to the percentage referred to in clause 4.05(b), the Lessee shall pay a rental amount which is halfway between that specified in the Lessor's notice (provided that the rental is substantiated by a registered valuer's report, and the rental payable immediately prior to the relevant review date. Upon determination of the new rental, an appropriate adjustment shall be made;
  - (v) the rent review shall be recorded in a variation of this Lease, the cost of which shall be shared equally between the parties;
  - (vi) in assessing the market value for the Land:
    - (aa) no account shall be taken of the Lessee's Improvements or this Lease to the intent that the Land is assumed to be vacant land without any improvements; and
    - (bb) no account shall be taken of the Permitted Use to the intent that the Land will be valued on the basis that it is available to be utilised for its highest and best use permitted under the District Scheme, but disregarding any designation for defence use;
  - (vii) Immediately following receipt by the Lessor of the Lessee's notice, the parties shall endeavour to agree upon the current market value of the Land (and consequential revised market rent having regard to clause 4.05(b)) but if agreement is not reached within twenty-eight (28) days then the current market value of the Land as at the relevant review date, may be determined by one party giving written notice to

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the other requiring the current market value for the Land to be determined by arbitration.

- (d) In the event of either party requiring determination by arbitration under clause 4.05(c)(vii), then the following shall apply:
- (i) The parties must not later than five working days after the date of the recipient party having received the other party's written notice under the preceding clause agree upon and jointly upon one person to act as the valuation arbitrator for the purposes of the arbitration. If the parties do not jointly appoint a valuation arbitrator within this time, then either party may request that the Arbitrators and Mediators Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.
  - (ii) The valuation arbitrator must be suitably qualified and experienced in determining disputes about the market value in rental of properties similar to the Land and is appointed when he or she confirms his or her willingness to act.
  - (iii) The valuation arbitrator must no later than [7] working days after the date the matter is referred to the valuation arbitrator's determination (the arbitration commencement date) do the following:
    - (aa) Give notice to the parties of the arbitration hearing, which must be held at a date, time and venue determined by the valuation arbitrator after consulting with the parties, but not in any event be any later than [30] working days after the arbitration commencement date; and
    - (bb) Establish the procedure for the arbitration hearing, including providing each party with the right to examine and re-examine or cross-examine as applicable, each parties valuer, and any other person giving evidence.
  - (iv) Each party must, not later than 5pm on that day that is [10] working days before the arbitration hearing, give to the valuation arbitrator, the other party and the other party's valuer, its valuation report, submission, and any sales or expert advice that it will present at the hearing. Each party must attend the arbitration hearing with its respective valuers, and may have its solicitors attend.
  - (v) The valuation arbitrator must have regard to the requirements of natural justice at the arbitration hearing and provide his or her determination of the market value of the Land for the purposes of determining the rental in accordance with the formula under the Lease, no later than [20] working days after the arbitration hearing.
  - (vi) An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.
- (e) The market value of the Land for the purposes of determining the relevant rental under the rent review provisions of the Lease, shall be that which is agreed under clause 4.05(c) above or determined by the valuation arbitrator under clause 4.05(d)(iii) as the case may be.

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- (f) In relation to the determination of the market value of the Land, each party must pay its own costs and half the costs of a valuation arbitration, [or in the case of the latter, meet such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator].
- (g) For the purposes of this clause 4.05, the market value of the Land will be assessed on a GST exclusive basis. For the avoidance of doubt, nothing in this subclause (g) limits the Lessor's ability to charge GST in addition to the rental, in accordance with clause 2.11 where applicable.

#### 4.06 NO DISTRESS

The Lessor shall not have any right to distrain under this Lease.

#### 4.07 LESSOR'S REMEDIES FOR BREACH

- (a) Should the Lessee either default in the payment of any rental at any time during the Renewal Term for a period exceeding thirty days or more, or otherwise breach any covenant on the Lessee's part in this Lease expressed or implied, then the following shall apply:
  - (i) before exercising any Lessor remedies (but expressly excluding re-entry or termination which shall not be permitted) the Lessor shall serve a notice (called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged
  - (ii) the Lessor's remedies shall specifically exclude re-entry and termination to the intent that this remedy not be available to the Lessor during the Term of this Lease.
- (b) The **Default Notice** despite anything to the contrary contained in clause 4.07(a) above shall specify that:
  - (i) the Lessee must within 30 days of receipt of such notice take reasonable steps towards remedying the default specified; and
  - (ii) that should the Lessee not remedy the default specified within this time (insofar as it is reasonably possible to remedy such breach within that time), the Lessor shall then be at liberty to exercise its remedies for such default but subject to clause 4.07(a)(ii).
- (c) The Lessor acknowledges that it shall not exercise its remedies as provided for under this clause 4.07, unless and until the provisions of clause 4.07(a) and (b) have been satisfied in full and further that any such remedy exercised contrary to the provisions of clause 4.07(a) shall be null and void ab initio.

#### 4.08 ENTIRE AGREEMENT

This Lease constitutes the entire and complete agreement between the parties in relation to the Lease of the Land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

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#### 4.09 DIFFERENCES AND DISPUTES

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies prescribed in clause 4.09 hereof.
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.06(b)(ii).

#### 4.10 SERVICE OF NOTICES

Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served or transmitted by facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 13 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.

If either party does not have a current address for service, then service in terms of this clause may be effected on that party:

- (a) In any manner mentioned in part 7 of the Property Law Act 2007; or
- (b) By registered post addressed to the registered office or principal place of business of the party intended to be served;

and any notice or other document given or served by the method mentioned in paragraph (a) shall be deemed to have been given or served and received by the other party two days after the date of posting.

#### 4.11 REGISTRATION OF LEASE

Either party may at any time during the Lease, require by giving written notice to the other party, that this Lease be registered. In such case the parties shall take all necessary steps to achieve and complete this and will share all costs in respect of the same.

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#### 4.12 COSTS

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's reasonable costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee), or the obtaining of any consents or approvals associated with this Lease.
- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper legal enforcement or proper attempted legal enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

#### 4.13 INTEREST

If the Lessee during the Renewal Term shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand (accompanied by a valid invoice) is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% per annum accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

#### 4.14 ESSENTIAL TERMS

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

(a) ***Payment of Rental:***

The covenant to pay rental or other money payable by the Lessee under this Lease;

(b) ***Sub Leasing:***

The provisions dealing with sub leasing; or

(c) ***Use of Land:***

Compliance with the Permitted Use, subject, however, to clause 4.02.

#### 4.15 WAIVER

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

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**4.16 RENT MORATORIUM**

If any moratorium or other law, act or regulation that (despite clause 4.05 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, then the following shall apply. The review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended, to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date with such reviewed rental becoming payable from the date the moratorium is listed or law, act or regulation is repealed or amended. Any subsequent rent review shall take place on the next following review date as specified in Item 8 of Schedule A.

**4.17 ARTEFACTS OR FOSSILS**

Artefacts, fossils, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological or cultural interest relating to the indigenous people of New Zealand discovered on or under the surface of the Land shall, as between the Lessor and Lessee, be deemed to be the property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged and shall, as soon as practicable, notify the Lessor of such discovery and carry out, at the expense of the Lessor, the Lessor's reasonable instructions as to delivery or disposal of such articles or things.

**4.18 CONSENTS AND APPROVALS**

Where the Lessee is required to obtain any consent or approval of the Lessor under this Lease and unless the context otherwise requires, then the following shall apply:

- (a) the Lessor will not unreasonably or arbitrarily withhold the giving or granting of any such consent or approval.
- (b) the Lessor will respond promptly to any request made by the Lessee for any such consent.

**4.19 LESSEES SECURITY REQUIREMENTS**

The Lessor will in exercising any right it has under this Lease, comply at all times with any security requirements of the Lessee as advised to the Lessor from time to time by the Lessee.

**4.20 TERMINATION IN EVENT OF SIGNIFICANT DAMAGE TO LAND**

- (a) In the event of any catastrophic, or significant damage to the Land which arises at any time during the Renewal Term, through any act of God which is incapable of being remedied by the Lessor and renders the Land (or any part of it) unusable by the Lessee then the following shall apply:
  - (i) the Lessee may terminate this Lease in respect of the Land (or any part of the Land (so damaged));
  - (ii) the Lessee may do that by giving the Lessor two months written notice of its election to terminate in the circumstances;

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- (iii) in the event of a termination as to part only, then the rental shall be reduced to reflect the reduction in the Land area being leased;
  - (iv) rental payable by the Lessee shall abate in proportion to the loss of use of the Land by the Lessee;
  - (v) the provisions of clause 4.04(b), would otherwise apply subject only however to the Lessee's make good obligation applying only to the extent it reasonably can in the circumstances, having regard to the nature and extent of the damage to the Land.
- (b) In the event of any catastrophic or significant damage to the Land during that part of the Initial Term as from and including the 14<sup>th</sup> anniversary of the Commencement Date up until and including the 33<sup>rd</sup> anniversary of the Commencement Date, then the same provisions as set out in clause 4.20(a) shall apply with the exception of the following:
- (i) The Lessee's written notice to the Lessor, which if given, must be given with 12 months' written notice (as opposed to two months' written notice).
  - (ii) The Lessor will be required to pay to the Lessee, the relevant amount stated in Schedule D, which represents the amount which would be payable should the Lessee have put the Put Option Notice on the next available anniversary date (following the date of such catastrophic or significant damage having occurred) during the Put Option Period.
  - (iii) The Lessor shall make the relevant payment together with GST (if any) to the Lessee on that date which is the expiry date of the 12 months' written notice pursuant to clause 4.20(b)(i).
  - (iv) The Lease shall expire on that date which is the expiry date of the 12 months' written notice referred to in the clause above.
  - (v) In the event the Lessor fails for whatever reason to pay the relevant payment and GST (if any) to the Lessee prior to 4pm on the relevant due date for payment, then the same provisions as are provided for under clause 4.21(e) shall apply.
  - (vi) For clarity it is recorded that the Lessee's obligation to make the relevant payment (and interest if any) under this clause 4.20(b) shall be secured by the Settlement Mortgage as provided for under the Deed of Settlement.

#### 4.21 DEFENCE PUT OPTION

- (a) The Lessee shall have the benefit of the Defence Put Option as set out in this clause 4.21.
- (b) The Lessee may exercise the Defence Put Option from and including the 10<sup>th</sup> anniversary date of the Commencement Date or upon any subsequent anniversary of that date up to and including the 29<sup>th</sup> anniversary (**Put Option Period**) during the Initial Term of this Lease, by giving five years prior written



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notice to the Lessor of its election to exercise the Defence Put Option (**Put Option Notice**).

- (c) In the event that the Lessee gives the Put Option Notice to the Lessor on any of the relevant anniversary dates during the Put Option Period (subject to clause 4.21(f)), then the following shall apply:
- (i) The Lessor shall pay to the Lessee the amount stated in the corresponding column to the anniversary date upon which the Put Option Notice is given set out in Schedule D plus GST (if any) (**Relevant Payment**), such amount having been calculated in accordance with a pre agreed formula agreed between the parties and recorded in the Deed of Settlement for the unexpired portion of the Initial Term.
  - (ii) The Lessor shall make the relevant payment together with GST (if any) to the Lessee on the relevant due date for payment in the corresponding column to the relevant payment set out in Schedule D.
  - (iii) The Lease shall expire on that date stated in the corresponding column to the anniversary date upon which the Put Option Notice is given set out in Schedule D, subject, however, to Note 2 to that Schedule.
- (d) On the due date for payment of any payment required in accordance with the above provisions, the Lessor shall pay to the Lessee such relevant payment plus GST (if any) in one payment of cleared funds without any deduction.
- (e) In the event the Lessor fails for whatever reason to pay the relevant payment plus GST (if any) to the Lessee prior to 4pm on the relevant due date for payment, then the following shall apply:
- (i) The Lessor shall also pay to the Lessee interest on the relevant payment (or unpaid portion of it) calculated at a daily rate of [10%pa] as from and including the relevant due date for payment until the date such payment is made to the Lessee in full.
  - (ii) The Lessor shall pay any such interest for late payment concurrently with the relevant payment.
  - (iii) If the Lessor fails in any event to make the relevant payment on the relevant original due date for payment in accordance with Schedule D then the following shall apply:
    - (aa) The Lessee may at any time following the relevant due date for payment give the Lessor a settlement notice requiring the Lessor to make the relevant payment plus GST (if any), and interest assessed in accordance with clause 4.21(e)(i) above, within 20 working days from receipt of the notice ("**Settlement Notice**").
    - (ab) If the Lessor fails to complete settlement in full within 20 working days from receipt of the Settlement Notice, then such failure shall be regarded as a breach on the part of the

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

Lessor under the Settlement Mortgage, entitling the Crown under that mortgage to exercise its remedies under the Settlement Mortgage, to the intent that the Settlement Mortgage secures (in addition to other obligations of the Lessor), the Lessor's payment obligations under this Lease.

- (f) Despite the provisions of this clause 4.21 as to the timing for the giving of any Put Option Notice, no Put Option Notice shall be invalid if it has not been given or received, on the relevant anniversary date, provided however it has been given within the period of 6 weeks either side of the relevant anniversary date. In the event of the notice having been given during that period, then it shall be deemed to have been given and received on the relevant anniversary date.

#### 4.22 CONCURRENT LEASE

- (a) The parties acknowledge that parts of the Land may be subject to the Existing Tenancies at the Commencement Date, and agree that should that be the case, then:
  - (i) the Lessee takes this Lease subject to any Existing Tenancies;
  - (ii) the Lessee has the right to receive rent and other payments due from the lessees, licensees and occupiers under the Existing Tenancies;
  - (iii) the Lessee has the right to enforce the covenants under the Existing Tenancies (but without having any obligation to do so);
  - (iv) the Lessee will not be liable for any breach of this Lease that is caused by any act or default of any occupier of any part of the Land under the Existing Tenancies;
  - (v) the Lessor must not do or omit to do anything, or require the Lessee to do or to omit to do anything that will cause the Lessee to be in breach of the Lessee's obligations under any Existing Tenancies;
  - (vi) the Lessee will have no liability to the Lessor for any loss, damage or any other cost that arises from the act or omission of any occupier under any Existing Tenancies; and
  - (vii) the Lessee may in all respects and despite any other provision in this Lease, deal with the Existing Tenancies without reference to the Lessor, including surrendering, extending or cancelling any Existing Tenancies.

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**3 LEASES FOR NZDF LEASEBACK PROPERTIES**

**SCHEDULE C**

**The Land - Narrow Neck North Shore**

[Full legal description to be included here].

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3 LEASES FOR NZDF LEASEBACK PROPERTIES

SCHEDULE D

Schedule of Cash Payment to be made by the Lessor to the Lessee on the Defence Put Option being exercised during the Initial Term as provided under clause 4.21.

Anniversary date from the Commencement Date upon which Put Option Notice is given (excludes anniversary dates 1-9)	Payment to be paid by the Lessor to the Lessee (plus GST) if any)	Date upon which payment is due and Lease expires*
10	\$	The 15 <sup>th</sup> anniversary of the Commencement Date of the Lease
11	\$	The 16 <sup>th</sup> anniversary of the Commencement Date of the Lease
12	\$	The 17 <sup>th</sup> anniversary of the Commencement Date of the Lease
13	\$	The 18 <sup>th</sup> anniversary of the Commencement Date of the Lease
14	\$	The 19 <sup>th</sup> anniversary of the Commencement Date of the Lease
15	\$	The 20 <sup>th</sup> anniversary of the Commencement Date of the Lease
16	\$	The 21 <sup>st</sup> anniversary of the Commencement Date of the Lease
17	\$	The 22 <sup>nd</sup> anniversary of the Commencement Date of the Lease
18	\$	The 23 <sup>rd</sup> anniversary of the Commencement Date of the Lease
19	\$	The 24 <sup>th</sup> anniversary of the Commencement Date of the Lease
20	\$	The 25 <sup>th</sup> anniversary of the Commencement Date of the Lease
21	\$	The 26 <sup>th</sup> anniversary of the Commencement Date of the Lease
22	\$	The 27 <sup>th</sup> anniversary of the Commencement Date of the Lease
23	\$	The 28 <sup>th</sup> anniversary of the Commencement Date of the Lease
24	\$	The 29 <sup>th</sup> anniversary of the Commencement Date of the Lease
25	\$	The 30 <sup>th</sup> anniversary of the Commencement Date of the Lease

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**3 LEASES FOR NZDF LEASEBACK PROPERTIES**

<b>Anniversary date from the Commencement Date upon which Put Option Notice is given (excludes anniversary dates 1-9)</b>	<b>Payment to be paid by the Lessor to the Lessee (plus GST) if any)</b>	<b>Date upon which payment is due and Lease expires*</b>
26	\$	The 31 <sup>st</sup> anniversary of the Commencement Date of the Lease
27	\$	The 32 <sup>nd</sup> anniversary of the Commencement Date of the Lease
28	\$	The 33 <sup>rd</sup> anniversary of the Commencement Date of the Lease
29	\$	The 34 <sup>th</sup> anniversary of the Commencement Date of the Lease

\* All references above to the notice, are to the Put Option Notice.

**Notes to this schedule**

1. The above payments are exclusive of GST (if any) which if payable shall be paid by the Lessor to the Lessee on the corresponding due date for that payment, as stated above in addition to the relevant payment stated above.
2. \*In the event of the relevant payment not being paid on the stated due date, then the Lease may at the Lessee's option, continue until such time as the relevant payment has been received in full from the Lessor.
3. The payments specified above in the second column have been calculated according to an agreed formula between the parties for the unexpired balance of the Initial Term, set out in the Settlement Deed, and outlined in the explanatory note attached.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

#### EXPLANATORY NOTE

##### Background

The Lessee, under the Deferred Put Option, has the option to cancel the lease effective from the start of the 16th lease year, and annually thereafter until the start of the 35th lease year. The Lessee must give notice of its intention five years prior to the effective termination date.

At the date the lease terminates due to exercise of the option, the Lessor must repay the outstanding Finance Amount (see below), if any, set out in Schedule D.

The purchase price of \$13,800,000 for the Land at the commencement date is satisfied by payment of a \$2,000,000 deposit, and the remaining \$11,800,000 ("Finance Amount") effectively becomes a loan made by the Lessee to the Lessor. Nominal interest on the Finance Amount is the Base Rate plus the Margin (see below). It is paid nominally annually in arrears.

Annual rent is nominally payable by the Lessee. In fact, it is pre-paid at the commencement date of the Lease. The nominal rent for these purposes will commence at 6.00% of the purchase price, i.e. \$828,000 pa. The nominal annual rent during the Initial Term is reviewable every seven years to 6.00% of the purchase price plus annually compounded escalation of 3.34% (+25.8575% per seven year period).

It is agreed that all rent will be forgone by the Lessor for 35 years (the Initial Term). This is longer than the time required to fully amortise the Finance Amount.

This note sets out how Schedule D is to be completed. For each year in the column, there will be an amount representing the unamortised Finance Amount, being the original Finance Amount plus the aggregate for that year of all nominal interest payments less the aggregate of all nominal rent payments.

##### Completion of Schedule D on settlement date

When the Lease is entered into the second column of Schedule D will be completed on the basis set out above.

The Finance Rate for these purposes will be calculated by the Crown at 11am on the Business Day immediately prior to the date the settlement legislation receives the Royal assent as the "Base Rate" plus the "Margin". The Crown will notify the Lessor on that day (and in any event prior to the commencement date of the Lease) what the Finance Rate is.

The Margin will be 4.13% per annum.

The following mechanism and associated definitions will be used in the calculation of the Base Rate:

*Base Rate* means, in respect of the advance of the Loan, the percentage (%) rate per annum equivalent to:

- (a) the Bid Rate for a 5-year New Zealand Government Bond as displayed on the page NZMKT of the Reuters Monitor Screen or any generally accepted successor page on the Business Day prior to the Settlement Date; or
- (b) if there is no 5-year New Zealand Government Bond, then the Base Rate will be determined by using Linear Interpolation of the Bid Rates for the purchase of New Zealand Government Bonds which have a maturity date (a) prior to, but closest to, the Maturity Date, and (b) later than, but closest to, the Maturity Date, in each case as displayed on the page NZMKT of the Reuters Monitor Screen on the Business Day prior to the Settlement Date; or

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

- (c) if no such rates are displayed, then the Base Rate will be calculated by the Crown by using Linear Interpolation of the Bid Rates for the purchase of New Zealand Government Bonds which have a maturity date (a) prior to, but closest to, the Maturity Date, and (b) later than, but closest to, the Maturity Date as determined by the Crown in its absolute discretion on the Business Day prior to the Settlement Date.

*Bid Rate* means in relation to a page used for the determination of a New Zealand Government Bond, the bid rate listed on that page, which will be the higher of the rates listed on that page for the relevant maturity.

*New Zealand Government Bond* means a nominal bond issued by Her Majesty the Queen in right of New Zealand.

Below is an example of how the calculation will work.

#### **Description of model based on hypothetical finance rate of 7.75%**

The Finance Amount is to be amortized for these purposes on the basis of annual rental payments in advance and annual interest payments in arrears. For clarification purposes, these calculations are described as follows, assuming for the purposes of calculation that the Base Rate plus the Margin gives an interest rate of 7.75% per annum:

At the start of year one of the lease, the Finance Amount is \$11,800,000. Deducting the first year's rent of \$828,000 annually in advance, the principal of the loan is reduced to \$10,972,000. At the end of that year interest will be charged at 7.75%, equating to \$850,330, and the Finance Amount increases to \$11,822,330.

At the start of the second lease year the Finance Amount is \$11,822,330, less rent of \$828,000, and the Finance Amount becomes \$10,994,330, attracting interest at the end of that year of \$852,061, so the Loan Amount at the end of year two is \$11,846,391. These calculations continue on an annual basis.

At the start of the eighth year, the rent is due for review. The parties have agreed to escalate land values at 3.34% per annum on a compounding basis assuming a freehold land value \$13,800,000. The annual rent at the start of year 8 is \$1,042,100. At the start of year 15 it is \$1,311,562.

On this basis, the Finance Amount is finally amortised during the 25th lease year.

Schedule D will set out the outstanding Finance Amount at the start of lease years 16 to 36 to be paid by the Lessor if the Lessee exercises the Defence Put Option effective at the start of each of those years. If the lease is terminated by the Lessee with effect from the start of the 16th lease year, the Lessor pays the Lessee the outstanding Finance Amount of \$9,672,550. At the start of the 20th year this would be \$5,798,920, and at the start of the 26th year, the payment is nil as the loan has been fully amortised.

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3 LEASES FOR NZDF LEASEBACK PROPERTIES

The table below sets out the repayment amounts assuming a finance rate of 7.75% per annum.

Narrow Neck Model

Inputs

Data	Agreed Input
Deposit	\$2,000,000
Price	\$13,800,000
Finance Amount	\$11,800,000
Rental Payments	Annually In Advance
Interest Payments	Annually In Arrears
FHLV for Reviews	\$13,800,000
Rental Rate	0.00%
Land Value Growth Rate	3.34% pa
Vendor Finance Interest Rate	7.75% pa

Calculations

Lease Year	Finance Amount at start of year	Rent In at start of year	Principal attracting Interest	Interest levied at end of year	Finance Amount at end of year
1	\$ 11,800,000	\$828,000	\$ 10,972,000	\$ 850,330	\$ 11,822,330
2	\$ 11,822,330	\$828,000	\$ 10,094,330	\$ 852,061	\$ 11,846,391
3	\$ 11,846,391	\$828,000	\$ 11,018,391	\$ 853,925	\$ 11,872,316
4	\$ 11,872,316	\$828,000	\$ 11,044,316	\$ 855,834	\$ 11,900,250
5	\$ 11,900,250	\$828,000	\$ 11,072,250	\$ 858,099	\$ 11,930,350
6	\$ 11,930,350	\$828,000	\$ 11,102,350	\$ 860,432	\$ 11,962,782
7	\$ 11,962,782	\$828,000	\$ 11,134,782	\$ 862,916	\$ 11,997,727
8	\$ 11,997,727	\$1,042,100	\$ 10,955,627	\$ 849,061	\$ 11,804,688
9	\$ 11,804,688	\$1,042,100	\$ 10,762,588	\$ 834,101	\$ 11,596,688
10	\$ 11,596,688	\$1,042,100	\$ 10,554,588	\$ 817,981	\$ 11,372,569
11	\$ 11,372,569	\$1,042,100	\$ 10,330,468	\$ 800,811	\$ 11,131,080
12	\$ 11,131,080	\$1,042,100	\$ 10,088,979	\$ 781,896	\$ 10,870,875
13	\$ 10,870,875	\$1,042,100	\$ 9,828,775	\$ 761,730	\$ 10,590,505
14	\$ 10,590,505	\$1,042,100	\$ 9,548,405	\$ 740,001	\$ 10,288,406
15	\$ 10,288,406	\$1,311,562	\$ 8,976,844	\$ 695,705	\$ 9,872,550
16	\$ 9,872,550	\$1,311,562	\$ 8,360,988	\$ 647,977	\$ 9,008,964
17	\$ 9,008,964	\$1,311,562	\$ 7,697,403	\$ 598,549	\$ 8,293,951
18	\$ 8,293,951	\$1,311,562	\$ 6,982,390	\$ 541,135	\$ 7,523,525
19	\$ 7,523,525	\$1,311,662	\$ 6,211,863	\$ 481,427	\$ 6,693,390
20	\$ 6,693,390	\$1,311,562	\$ 5,381,828	\$ 417,092	\$ 5,798,920
21	\$ 5,798,920	\$1,311,562	\$ 4,487,358	\$ 347,770	\$ 4,835,129
22	\$ 4,835,129	\$1,850,699	\$ 3,184,430	\$ 248,793	\$ 3,431,223
23	\$ 3,431,223	\$1,650,699	\$ 1,780,624	\$ 137,991	\$ 1,918,514
24	\$ 1,918,514	\$1,850,699	\$ 267,815	\$ 20,766	\$ 288,571
25	\$ 288,571	\$1,650,699	Finance Amount Amortised		
26					
27					
28					
29					
30					
31					
32					
33					
34					
35					

Output for Lease Schedule:

Start of year	Balance Outstanding
18	\$9,672,660
17	\$9,008,964
18	\$8,293,951
19	\$7,523,525
20	\$6,693,390
21	\$5,798,920
22	\$4,835,129
23	\$3,431,223
24	\$1,918,514
25	\$288,571
26	\$0
27	\$0
28	\$0
29	\$0
30	\$0
31	\$0
32	\$0
33	\$0
34	\$0
35	\$0



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3 LEASES FOR NZDF LEASEBACK PROPERTIES

SCHEDULE E

Rental payable by the Lessee for each year of the Initial Term (plus GST if any)		
1	\$ pa	
2	\$ pa	
3	\$ pa	
4	\$ pa	
5	\$ pa	
6	\$ pa	
7	\$ pa	
8	\$ pa	
9	\$ pa	
10	\$ pa	
11	\$ pa	
12	\$ pa	
13	\$ pa	
14	\$ pa	
15	\$ pa	
16	\$ pa	
17	\$ pa	
18	\$ pa	
19	\$ pa	
20	\$ pa	
21	\$ pa	
22	\$ pa	
23	\$ pa	
24	\$ pa	
25	\$ pa	
26	\$ pa	
27	\$ pa	
28	\$ pa	
29	\$ pa	
30	\$ pa	
31	\$ pa	
32	\$ pa	
33	\$ pa	
34	\$ pa	

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3 LEASES FOR NZDF LEASEBACK PROPERTIES

<b>Rental payable by the Lessee for each year of the Initial Term (plus GST if any)</b>	
35 \$ pa	

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3 LEASES FOR NZDF LEASEBACK PROPERTIES

SCHEDULE F

*[List of buildings included in the Lessee's Improvements to be attached here]*

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**Deed of Lease of Base Housing - Beresford,  
Birchfield, Hillary, Marsden and Plymouth  
Blocks, North Shore**

[Ngati Whatua Orakei Governance Entity or nominee]  
Her Majesty the Queen in right of her Government in  
New Zealand acting by and through the Chief of  
Defence Force

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#### Parties

[Ngati Whatua Orakei Governance Entity or nominee] (Lessor)

Her Majesty the Queen in right of her Government in New Zealand acting by and through the Chief of Defence Force (Lessee)

#### Background

- A The Lessor is the registered proprietor of an estate in fee simple in all of the Land including all of the Dwellings and Infrastructure.
- B The Lessor has agreed to lease the Land to the Lessee and the Lessee has agreed to take a lease of the Land, pursuant to the Deed of Settlement.
- C The parties acknowledge that parts of the Land are as at the Commencement Date, subject to residential and other tenancy agreements and that the Lessee takes this Lease of the Land subject to those existing residential and other tenancy agreements (being the Existing Tenancies), to the intent that this Lease is, in respect of those parts of the Land subject to those Existing Tenancies, a concurrent lease.
- D The Lessor and the Lessee have entered into this deed to record the terms of the Lease.

#### Operative provisions

##### 1 Grant of Lease

- 1.1 The Lessor leases to the Lessee and the Lessee takes the Land on lease, for the term beginning on the Commencement Date and ending on the Expiry Date on the terms set out in this Lease.

##### 2 Concurrent Lease

- 2.1 The parties acknowledge that parts of the Land are subject to the Existing Tenancies at the Commencement Date, and agree that:
- 2.1.1 the Lessee takes this Lease subject to any Existing Tenancies;
- 2.1.2 the Lessee has the right to receive rent and other payments due from the lessees, licensees and occupiers under the Existing Tenancies;
- 2.1.3 the Lessee has the right to enforce the covenants under the Existing Tenancies (but without having any obligation to do so);
- 2.1.4 the Lessor must not do or omit to do anything, or require the Lessee to do or to omit to do anything that will cause the Lessee to be in breach of the Lessee's obligations under any Existing Tenancies; and
- 2.1.5 the Lessee may in all respects deal with the Existing Tenancies without reference to the Lessor, including surrendering, extending or cancelling any Existing Tenancies but will ensure that the Existing Tenancies are

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not varied to result in a fixed term which will expire later than the Expiry Date.

#### 3 Term

- 3.1 The Term of this Lease shall commence on the Commencement Date and shall be for the period specified in Item 4 of the Reference Schedule.
- 3.2 The Term shall expire on the relevant corresponding Expiry Date in item 6 of the Reference Schedule unless terminated earlier pursuant to this Agreement.
- 3.3 If the Lessor permits the Lessee to remain in occupation of the Land or any part of the Land, after the end or earlier termination of the Term, the Lessee will occupy the Land (or any part of the Land) under a periodic tenancy that may be terminated on 20 working days written notice from either party to the other. The terms of this Lease and other matters implied by law will continue to apply between the parties, to the extent they are applicable to periodic tenancies.
- 3.4 The Lessee shall deliver vacant possession of the Land to the Lessor on the Expiry Date, subject only to the Existing Tenancies.

#### 4 Rent

- 4.1 The Rent for the Term of this Lease is the rent set out in Item 7 of the Reference Schedule. The parties acknowledge that the total Rent for all of the Term of the Lease has been prepaid as at the Commencement Date by the Lessee and the Lessor acknowledges receipt of that payment.
- 4.2 The Rent will not be reviewed during the Term of this Lease.

#### 5 GST

- 5.1 The Lessee warrants that the Land is to be used for the principal purpose of accommodation in dwellings (as defined in the GST Act) on the Land and so the supply made by the Lessor under this Lease is an exempt supply for the purposes of the GST Act.
- 5.2 Where and to the extent that the Lessee intends to change this use:
- 5.2.1 the Lessee must notify the Lessor at least 6 months before any such change occurs, such notice to include details as to the extent of such change; and
- 5.2.2 if GST is, as a result of any change in use, payable by the Lessor on the Rent or any other money payable by the Lessee under this Lease, this Lease must be amended to allow recovery by the Lessor from the Lessee of the GST and provision by the Lessor of GST invoices.

#### 6 Rates and Utilities

- 6.1 The Lessee will pay all rates and all charges for electricity, gas, water, sewage, power and other utility services levied or charged in respect of the Land including the Dwellings and the Infrastructure on the Land, as from the Commencement Date until the Expiry Date or date of earlier termination.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

- 6.2 If a separate invoice is not rendered for a particular rate or charge then the Lessee shall pay a fair proportion, based on actual use or consumption, as assessed by the Lessor acting reasonably.

## 7 Management and Maintenance

### Lessee's management and maintenance

- 7.1 The Lessee will manage and maintain the Dwellings and the Infrastructure to such standard as the Lessee requires having regard to the Lessee's needs during the Term of this Lease, subject however to clause 7.3.
- 7.2 The Lessee will procure that its sublessees or licensees will keep any grounds and surfaced areas on the Land associated with individual Dwellings in a tidy condition and maintain any garden, lawn or landscaped areas in a tidy and cared for condition.
- 7.3 At the end or earlier termination of the Term, the Lessee will yield up the Dwellings and Infrastructure located on the Land in such order, repair and condition which is not of a lower standard than that as at the Commencement Date, but excluding however any liability for the following;
- 7.3.1 Deterioration from fair wear and tear;
- 7.3.2 Damage caused by fire, flood, earthquake, earth subsidence, storm, tempest, volcano, other catastrophic event beyond the Lessee's control, act of God or inevitable accident.
- 7.4 The Lessee's obligations in clauses 7.1 to 7.3 shall be subject to its reserved rights in clause 17 of this Lease.

### Lessor's Maintenance

- 7.5 For clarity, the parties record that the Lessor shall not have any maintenance obligations or any other obligation to repair or replace in respect of the Land including the Dwellings or Infrastructure provided however the Lessor will be responsible for remedying any damage, which either the Lessor or any person under its control creates or causes.

## 8 Use of the land and improvements

- 8.1 The Lessee shall not use nor permit any other person to use the Land and any Dwellings on the Land for any purpose other than that specified in Item 9 of the Reference Schedule.
- 8.2 Should the use of the Land and any Dwellings be permissible only with the consent or licence of any Authority under or in pursuance of statute or any Regional and District Plans or regulation or other enactment, the Lessee shall obtain such consent or licence at its sole cost and expense, and the Lessee shall at all times comply with any conditions of such consent, order or authority obtained.
- 8.3 The Lessor does not warrant:
- 8.3.1 that the Land is or will remain suitable or adequate for any of the purposes of the Lessee; or



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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

- 8.3.2 that the relevant Regional or District Plans allow the Land and/or the Dwellings to be used for the Permitted Use.

#### **9 Removal of Lessee's Fixtures, Fittings and Chattels**

- 9.1 The Lessee may at any time before the end or earlier termination of the Term, remove all fixtures, fittings and chattels owned by the Lessee from the Dwellings and the Land and make good at the Lessee's own expense all resulting damage. This shall however specifically exclude all chattels, fixtures and fittings which the Lessor acquired along with the Land and Dwellings pursuant to the Deed of Settlement, a list of which is attached as Schedule 2.
- 9.2 If the Lessee has not so removed all its chattels, fixtures and fittings, then ownership of such fixtures, fittings and chattels will pass to the Lessor with the exception of any items which have security status according to the Lessee (if any) or items which are owned by any sublessee or licensee. The Lessee shall use best endeavours to have such items within that status removed as soon as reasonably possible.
- 9.3 The reasonable cost of making good resulting damage where the Lessee elects to remove any items pursuant to clause 9.1, shall be recoverable from the Lessee and the Lessor shall not be liable to pay any compensation nor be liable for any loss suffered by the Lessee.

#### **10 Lessor's access**

- 10.1 The Lessor may, with all necessary materials and equipment at all reasonable times pre-arranged with the Lessee and any sublessee or licensee affected, and on reasonable notice as advised (but at any time without notice in the case of an emergency), subject to and in accordance with any security requirements advised by the Lessee from time to time, enter the Land to:
- 10.1.1 inspect the condition and state of repair of the Land; or
  - 10.1.2 carry out any works to comply with any statutes, regulations, by laws, ordinances, orders, proclamations, requirements of or notices by any Authority which have not been effected by the Lessee.
- 10.2 The right of access pursuant to clause 10.1 is a right for the Lessor to enter onto the Land only. The Lessor shall:
- 10.2.1 not enter any Dwelling on the Land, unless in compliance with clause 10.3;
  - 10.2.1 only remain on the Land for such period as is reasonable in the circumstances;
  - 10.2.3 take all reasonable precautions to ensure that any sublessee's ability to use the Land is not unreasonably affected and that any other reasonable requirements of either the Lessee or its sublessees are complied with;
  - 10.2.4 take all reasonable precautions to ensure the Lessee's obligations to its sublessees in terms of quiet enjoyment are not breached;
  - 10.2.5 enter the Land for the purposes of such access, entirely at its own risk;

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- 10.2.6 reimburse the Lessee for any reasonable costs, losses, damage or other claims associated with any such act or omission on the part of the Lessor or persons under its control for any damage caused by it or them in the course of the Lessor exercising such right of access.
- 10.3 Should access to a Dwelling be required, the Lessor will provide at least two (2) weeks prior written notice to the Lessee of the desired time, date and duration of such visit, including identification of the contractor engaged by the Lessor who will be entering the Dwelling and the purpose for such visit. The parties will agree a time and date for such visit. Access arrangements will be at the Lessee's sole discretion. Such consent will not be unreasonably or arbitrarily withheld but the Lessee is entitled to impose conditions of consent including for example limiting the frequency of access and requiring escort and allowing access at such time as is suitable to and convenient for the occupier of the Dwelling affected.
- 11 Interest for late payment**
- 11.1 Either party may charge interest on any payment due but unpaid by the other party at 10% per annum from the due date for payment until the date of payment.
- 12 Statutory requirements**
- 12.1 The Lessee will comply with all statutes, Regional and District Plans, bylaws and regulations which relate to the Land and the Dwellings or which relate to the Lessee's use of the Land and the Dwellings and with all conditions or requirements which may be given or required by any person having any lawful authority and will in particular but without limitation:
- 12.1.1 ensure that the Dwellings comply with all statutes, bylaws and regulations relating to the provision of residential accommodation (including, to the extent relevant, the Building Act 2004, Housing Improvement Regulations 1947 and Residential Tenancies Act 1986);
- 12.1.2 comply with all statutes, bylaws and regulations in relation to the provision of residential accommodation and the Permitted Use;
- 12.1.3 ensure that proper and adequate health and safety procedures are adopted in accordance with the Health and Safety in Employment Act 1992; and
- 12.2 If the Lessee breaches the provisions of clause 12.1 as a result of any act or omission of the Lessor or any person under the Lessor's control then the Lessor shall meet the cost of rectifying such breach. The Lessor will also meet the costs of any breach in statutory requirements arising from actions or omissions of the Lessor.
- 13 No assignment**
- 13.1 The Lessee shall not assign or otherwise part with possession of any part of the Land, this Lease or the Dwellings except as required to carry on the Permitted Use. The grant of sub-tenancies, licences or other rights of occupation by the Lessee in accordance with the Permitted Use shall not contravene the provisions of this clause (to the intent that these are permitted as of right without the need to obtain

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

the Lessor's consent to the same), provided that such sub-tenancies, licences or other rights of occupation end on or before the expiry of this Lease.

#### **14 Lessee's acknowledgement of risk**

- 14.1 The Lessee agrees to occupy and use the Land and the Dwellings at the Lessee's risk and releases to the full extent permitted by law the Lessor from all claims and demands of any kind and from all liability which may arise in respect of any accident damage or injury occurring to any person or property in or about the Land and any Dwellings, except where the Lessor or any person under the control of the Lessor is at fault, through their own acts or omissions, and whether neglect or otherwise in which case the Lessor shall be liable to the Lessee.

#### **15 Reimbursement by lessee**

- 15.1 The Lessee will be responsible for rectification of any damage arising from:
- 15.1.1 any breach by the Lessee of any of the provisions expressed in this Lease which are required to be observed and performed by the Lessee;
  - 15.1.2 any act or omission in connection with the use of the Land or the Dwellings by the Lessee or by persons under its control including tenants under Existing Tenancies; and
  - 15.1.3 contamination of the Land by the Lessee where such contamination has been caused by the Lessee and has occurred during the Term under this Lease.
- 15.2 The liability of the Lessee under clause 15.1 shall further extend to cover full recompense without deduction or set off to the Lessor for any fine, penalty, or expense imposed on the Lessor as a result of any failure by the Lessee or persons under its control to observe or perform the requirements of any statute, bylaw, regulation or Regional or District Plan arising out of any statute or regulation applicable to the Lessee's use of the Land during the Term of the Lease.
- 15.3 The provisions of this clause 15 shall subsist notwithstanding any determination of this Lease and shall be in addition to any other right or remedy the Lessor may have, but subject to clause 24.

#### **16 Insurance**

- 16.1 While neither party shall have any obligation to insure the Dwellings or Infrastructure, either party may elect to insure the Dwellings and Infrastructure on the Land for such insurable value, and against such risks, as that party considers necessary or desirable.

#### **17 Lessee's repair works**

- 17.1 If any one or more of the Dwelling(s) shall be damaged, then subject to clause 17.2, the Lessee will with all reasonable speed and at its sole cost repair such damage to the relevant Dwellings to a standard not less than as the previously existing Dwelling(s) prior to such damage.

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- 17.2 Clause 17.1 is without prejudice to the Lessee's right, in the event of any material or significant damage (including but not limited to total destruction) to the relevant Dwelling(s), to elect not to repair the relevant Dwelling(s), in which case the Lessee shall at its sole cost, remove the remains of the relevant Dwelling(s) (if any) from the underlying lot(s) on which the relevant Dwelling(s) are located on the Land.
- 17.3 For the purposes of clause 17.2, 'any material or significant damage' shall be determined by the Lessee according to its sole discretion.
- 17.4 For clarity, 'removal of the remains of the relevant Dwelling(s)' for the purposes of clause [17.2.1] shall include:
- 17.4.1 Removal of all debris directly related to the relevant Dwelling(s); and
- 17.4.2 Clearance of the land on which the relevant Dwelling(s) stand on, down to ground level except that fences and garages may be left; and
- 17.4.3 The capping of any services to the relevant Dwelling(s).
- 18 Quiet enjoyment**
- 18.1 The Lessee shall peaceably hold and enjoy the Land, Dwellings and Infrastructure thereon without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.
- 19 Notices**
- 19.1 All notices including requests, demands and other communications under this Lease, to be given by a party to any other party may be given by personal delivery or sent by an accepted means of electronic transmission to the other party. Any notices shall be deemed given when personally delivered or if sent by electronic transmission in the manner set out in clause 19.2 shall be deemed given on the first Working Day following the day of sending of the electronic transmission.
- 19.2 Any notice shall be in writing addressed to the party to whom it is to be sent at the address or facsimile number from time to time designated by that party in writing to any other party. Until any other designation is given, the address and facsimile number of each party shall be those set out in the Reference Schedule.
- 20 Mediation**
- 20.1 The Lessor and the Lessee will first try to resolve by mediation all disputes that arise between them concerning:
- 20.1.1 the meaning or application of any part of this Lease, or
- 20.1.2 anything in connection with or which might affect this Lease.
- 20.2 Either party may commence a mediation by giving the other notice in writing requiring the mediation. The parties will agree the rules for any mediation before they commence the mediation. Participation in a mediation will not affect any other right either party has.
- 20.3 Either party may have the dispute sent for resolution by arbitration under clause 21 if the dispute has not been resolved by mediation within one month of the

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

mediation being requested. A person who has participated in an unsuccessful mediation cannot be the umpire in the arbitration.

#### 21 Arbitration

- 21.1 A dispute that has not been resolved by mediation under clause 20 will be determined by arbitration under this clause 21, and the parties will refer the dispute to the arbitration of a single arbitrator.
- 21.2 The parties must try to agree on the arbitrator. If the parties cannot agree, the President for the time being of the New Zealand Law Society (or his or her nominee) will, on either party's application, nominate the arbitrator.
- 21.3 The parties must go to arbitration under this clause 21 before they can begin any action at law (other than an application for injunctive relief).

#### 22 Costs

- 22.1 Each party shall meet their own costs in preparing and finalising this Lease or any variation of this Lease.
- 22.2 The Lessor shall be responsible for payment of all duty payable on this Lease or any variation to this Lease.

#### 23 No Indemnity

- 23.1 For clarity the Lessee does not provide any indemnity to the Lessor in regard to any matter under this Lease.

#### 24 Lessor's Remedies for Breach

- 24.1 Should the Lessee for a period exceeding thirty days or more, breach any covenant on the Lessee's part in this Lease expressed or implied, then the following shall apply:
- 24.1.1 before exercising any Lessor remedies (but expressly excluding re-entry or termination which shall not be permitted) the Lessor shall serve a notice (called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged
- 24.1.2 the Lessor's remedies shall specifically exclude re-entry and termination to the intent that this remedy not be available to the Lessor during the Term of this Lease.
- 24.2 The Default Notice despite anything to the contrary contained in clause 24.1.124(a)(i) above shall specify that:
- 24.2.1 the Lessee must within 30 days of receipt of such notice remedy the default specified; and
- 24.2.2 that should the Lessee not remedy the default specified within this time, the Lessor shall then be at liberty to exercise its remedies for such default but subject to clause 24.1.2.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

24.3 The Lessor acknowledges that it shall not exercise its remedies as provided for under this clause 24, unless and until the provisions of clause 24.1 and 24.2 have been satisfied in full and further that any such remedy exercised contrary to the provisions of clause 24.1 and 24.2 shall be null and void ab initio.

## 25 Definitions and interpretation

### Definitions

25.1 In this Lease, where not inconsistent with the context:

**Authority** means any government authority whether national or territorial or any other government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land or the Dwellings.

**Commencement Date** means the relevant date specified in Item 5 of the Reference Schedule.

**Deed of Settlement** means the Deed of Settlement entered into by Ngati Whatua Orakei, Ngati Whatua Orakei Trustee Limited and Her Majesty the Queen in right of her Government in New Zealand in regard to the North Shore redress, which Deed is dated [date] and has been entered into pursuant to the Agreement in Principle.

**Existing Tenancies** means all existing leases, licences and other occupancy agreements in respect of the Land, which are current as at the commencement date of this Lease.

**Dwellings or Dwelling** means as the case may be any building or buildings or other fixed structures including any fencing on the Land as the context requires.

**Expiry Date** means the relevant date specified in Item 6 of the Reference Schedule.

**GST** means the tax levied under the GST Act and includes any tax levied in substitution for that tax.

**GST Act** means the Goods and Services Tax Act 1985.

**Infrastructure** means:

- all Infrastructure, plant, equipment and assets on or in the Land used to provide services to the Land; and
- any concrete, asphalt, paved or tiled roadway, path or surface,

which exists on the Land.

**Land** means that land described in Item 3 of the Reference Schedule.

**Lessee** means Her Majesty the Queen for Defence Purposes and where the context permits includes the Lessee's tenants and other lawful occupiers of the Land and the Lessee's contractors, agents and invitees (which persons shall be deemed to be persons under the control of the Lessee).

**Lessor** means [Ngati Whatua o Orakei Governance Entity] and includes its successors and assigns, and where the context permits includes the Lessor's contractors, agents and invitees.

**Permitted Use** means the permitted use specified in Item 9 of the Reference Schedule.

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

**Reference Schedule** means the reference schedule being Schedule 1 of this Lease.

**Regional Plan** and **District Plan** shall have ascribed to them the definitions set out in Section 2 of the Resource Management Act 1991 and **Regional** and **District Plans** shall be constructed accordingly and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.

**Rent** means the rent specified in the Reference Schedule under Item 7.

**Rent Payment Dates** means the dates specified in Item 8 of the reference schedule.

**Term** means the term of this Lease specified in Item 4 of the Reference Schedule.

**Working Day** means any day other than a Saturday or Sunday or statutory holiday, or anniversary holiday in Wellington or Auckland.

#### Interpretation

- 25.2 For the purpose of the interpretation or construction of this Lease unless the context provides otherwise:
- 25.2.1 Words importing any gender shall include all other genders.
  - 25.2.2 Words importing the singular shall include the plural and vice versa.
  - 25.2.3 Payments shall be made in the lawful currency of New Zealand.
  - 25.2.4 Headings shall be ignored.
  - 25.2.5 References to schedules and clauses are references to schedules and clauses in this Lease and references to parties are references to the parties to this Lease and their respective successors and assigns unless expressly stated otherwise.
  - 25.2.6 Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
  - 25.2.7 A **person** shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 2 of the Public Finance Act 1989 in each case whether or not having separate legal personality.
  - 25.2.8 **Writing** shall include words visibly represented or reproduced.
  - 25.2.9 Where approvals or consents are required in this Lease they shall not be unreasonably or arbitrarily withheld or delayed and such approvals or consents may be given with conditions which are both reasonable and relevant to the circumstances giving rise to the request to seek approval or consent and shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.
  - 25.2.10 No consent or waiver, express or implied, by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.

- 25.2.11 No party to this Lease shall constitute or be deemed or construed to constitute a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.
- 25.2.12 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.
- 25.2.13 This Lease shall be construed and take effect in accordance with the laws of New Zealand.
- 25.2.14 The Lessee's obligations and agreements under this Lease are for the benefit of the Lessor and also, in accordance with the Contracts (Privity) Act 1982.



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3 LEASES FOR NZDF LEASEBACK PROPERTIES

**Execution and date**

Executed as a deed.

Date:

**[Ngati Whatua Orakei Governance Entity]** and in the presence of:

.....  
Signature of witness

.....  
Name of witness (print)

.....  
Occupation of witness

.....  
Address of witness

**Her Majesty the Queen in Right of her Government in New Zealand acting by and through the Chief of Defence Force** pursuant to section 25(5) of the Defence Act 1990:

.....  
Signature of witness

.....  
Signature of authorised person

.....  
Name of witness (print)

.....  
Name of authorised person (print)

.....  
Occupation of witness

.....  
Address of witness

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

#### Schedule 1

#### Reference Schedule

##### ITEM 1

##### Lessor particulars

Name: [Ngati Whatua Orakei Governance Entity or nominee]

Address

Fax:

Telephone:

Contact person:

##### ITEM 2

##### Lessee particulars

Name: Her Majesty the Queen in Right of her Government in New Zealand acting by and through the Chief of Defence Force

Address: Defence House, Aitken Street, Wellington

Fax: (04) 496 0006

Telephone:

Contact person: Chief of Defence Force

##### ITEM 3

##### Land

Those parts of the parcel of land comprised in Computer Freehold Registers [ ] (comprising a total area of [ ]), legally described as [ ], being:

- Beresford Block -
- Birchfield Block -
- Hillary Block -
- Marsden Block -
- Plymouth Block -

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### 3 LEASES FOR NZDF LEASEBACK PROPERTIES

**ITEM 4                      Term**

Five (5) years.

**ITEM 5                      Commencement Date**

[                      ].

**ITEM 6                      Expiry Date**

Five (5) years from the Commencement Date.

**ITEM 7                      Total Rent for Term**

\$24,251,243 for the Term of the Lease which is allocated as follows:

Beresford block \$1,307,485  
Birchfield block \$1,890,844  
Hillary block \$7,371,881  
Marsden block \$5,358,024  
Plymouth block \$8,323,009

**ITEM 8                      Rent Payment Dates**

The rental for the Term of the Lease has been paid in full in advance as at the Commencement Date.

**ITEM 9                      Permitted Use**

Residential accommodation and all ancillary purposes.

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3 LEASES FOR NZDF LEASEBACK PROPERTIES

**Schedule 2**

**List of Lessor's Chattels, Fixtures and Fittings as at the Commencement Date**

[to be attached]